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[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
25th November, 1959.

Feroz Din *v.* State of W. Bengal.
Cr.A. No. 48 of 1958.

Industrial Disputes Act (XIV of 1947), *section* 27—*Meaning of ' lock-out '*.

The term ' lock-out ' means a refusal by the employer to allow any number of persons employed by him to attend to their duties without effecting a termination of service. The wording of the notices in the instant case did not indicate that there was a refusal on the part of the company to continue to employ the workmen concerned as contemplated by the definition of a ' lock-out ' in the Industrial Disputes Act. On a proper construction of the notices there was no such refusal but merely a discharge of the workmen. A ' lock-out ' by the Management is a counterpart of a strike by the workmen. The words " refusal by an employer to continue to employ any number of persons employed by him do not include the discharge of an employee". The discharge of the workmen did not amount to a ' lock-out '.

H. J. Umrigar and *S. Ghosh*, for Appellant.

S. M. Bose, Advocate-General, W. Bengal, *A. N. Mitter*, Senior Standing Counsel, W. Bengal (with *D. N. Mukherjee* and *P. K. Bose*), for Respondent.

B. Sen, Senior Advocate (with *C. Chakarvarti* and *B. N. Ghosh*), for Intervener Company.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
26th November, 1959.

State of Jammu and Kashmir *v.* Th. Ganga Singh.
C.A. No. 217 of 1959.

Constitution of India (1950), *Article* 132—*Law as to interpretation of Article* 14 *well settled—Application to facts of the case—If raises substantial question of law.*

The appeal was not maintainable as it did not involve any substantial question of law involving the interpretation of the Constitution. Article 14 of the Constitution had already been interpreted by the (Supreme Court) in several cases and mere application of the Article to facts in the instant case did not raise any substantial question of law involving the interpretation of the Constitution.

S. N. Sanayal, Additional Solicitor-General of India, for Appellant.

R. K. Garg and *M. K. Ramamurthi*, for Respondents.

G.R. —— *Appeal dismissed.*

[Supreme Court.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
26th November, 1959.

State of Bihar *v.* H. R. M. Jute Mills.
C.A. Nos. 678/1957, 546/1958 & 115/1959.

Bihar Sales Tax Act (XIX of 1947), section 14-A—Scope.

Only the contravention of the statutory provisions contained in section 14-A of the Bihar Sales Tax Act or of the rules prescribing conditions and restrictions in that behalf can form the basis of the imposition of the penalty of forfeiture. In the present case, the Court held that section 14-A could not be invoked against the respondent and hence the order of forfeiture was illegal.

Lall Narayan Sinha and *S. P. Varma,* for Appellant.

C. K. Daphtary, Solicitor-General of India with *R. C. Prasad,* for Respondent No. 1 in C.A. No. 678 of 1957.

B. C. Ghosh, Senior Advocate with *P. K. Chatterjee,* for Intervener.

H. N. Sanayal, Additional Solicitor-General of India, for Respondent No. 1 in C.A. No. 546 of 1958 and C.A. No. 115 of 1959.

G.R. — *Appeals dismissed.*

[Supreme Court.]

S. J. Imam, J. L. Kapur and K. N. Wanchoo, JJ.
30th November, 1959.

State *v.* Hiralal G. Kothari.
Cr.A. Nos. 25-27 of 1958.

Penal Code (XLV of 1860), *sections* 120-*B and* 165-*A—Official Secrets Act (XIX of* 1923), *section* 1—*Criminal Procedure Code (V of* 1898), *section* 337.

Section 5 of the Official Secrets Act and section 120-*B* of the Indian Penal Code did not fall in any of the three categories detailed in section 337 (1) of the Criminal Procedure Code. Pardon could be granted only with respect to the three categories detailed in that section.

Bipin Bihari and *R. H. Dhebar,* for Appellant.

G. C. Mathur, for Respondents in Cr. A. No. 25/1958.

A. G. Ratnaparkhi, for Respondents in Cr. A. No. 26/1958.

Nemo, for Respondents in Cr. A. No. 27/1958.

G.R. — *Appeals dismissed.*

[Supreme Court.]

S. J. Imam, S. K. Das, J. L. Kapur, A. K. Sarkar and M. Hidayathullah, JJ.
2nd December, 1959.

Chaturbhai M. Patel *v.* Union of India.
Petition No. 9 of 1957.

Central Excise and Salt Act (I of 1944), *sections* 6 *and* 8*—Rules thereunder—Vires of—Government of India Act,* 1935*—Article* 19 (1) (*f*) (*g*) *of the Constitution.*

The Court rejected the contentions of the petitioner that sections 6 and 8 of the Central Excise and Salt Act, 1944, are *ultra vires* being beyond the competence of the Central Legislature under the Government of India Act, 1935. The Court further held that the petitioner's fundamental rights under Article 19 (1) (*f*) and (*g*) have not been violated because he had no such fundamental rights.

B. D. Sharma, for Petitioner.

C. K. Daphtary, for Respondents.

G.R. — *Petition dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
3rd December, 1959.

Narinder Kumar *v.* Union of India.
Petition No. 85 of 1958.

Non-Ferrous Metal Control Order, 1958, *Clauses* (3) *and* (4)—*Essential Commodities. Act* (*X of* 1955), *section* 3—*Article* 19 *of the Constitution.*

" There is no escape, therefore, from the conclusion that so long as principles are not specified by the Central Government by an order notified in accordance with sub-section (5) and laid before both Houses of Parliament in accordance with sub-section (6) of section 3 of the Essential Commodities Act, 1955, the regulation by Clause 4 of Non-Ferrous Metal Control Order, 1958, as it is now worded is not within the saving provisions of Articles 19 (5) and 19 (6) of the Constitution, and is void as taking away the rights conferred by Articles 19 (1) (*f*) and 19 (1) (*g*) ".

C. B. Aggarwala, for Petitioners.

H. N. Sanayal, Additional Solicitor-General of India, for Respondents.

G.R.

Petition partly allowed and partly dismissed.

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
14th December, 1959.

A. C. Lagu *v.* The State of Bombay.
Cr.A. No. 73 of 1959.

Penal Code (*XLV of* 1860), *section* 302—*Sentence of death.*

By Majority.—The Court rejected the defence plea that there was no proof that the appellant had travelled with Mrs. Karve, the victim of the murder, in the same compartment, that she had died after a heart-attack and that it had not been established that she died of poisoning or that the appellant administered it. The Court held the only sentence that could be imposed for a " planned and cold-blooded murder for gain " was a sentence of death.

Sarkar, J. who disagreed with the majority view, held that the prosecution had failed to prove the guilt of the accused.

A. S. R. Chari, for Appellant.

H. M. Seervai, Advocate-General Bombay, for Respondent.

G.R.

Appeal allowed.

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
15th December, 1959.

S. Kapur Singh *v.* Union of India.
C.A. No. 230 of 1959.

Public Servants Enquiries Act (*XXXVII of* 1850)—*Dismissal of public servant—Natural justice—Requirements—Articles* 14 *and* 311 *of the Constitution—Scope.*

" The President of India was not bound before passing an order dismissing the appellant to hear the evidence of witnesses. He could arrive at his conclusion on the evidence already recorded in the inquiry by the inquiry commissioner." The Court also rejected the contention that the failure to give an opportunity for an oral representation before taking the final action against the appellant was a violation of Article 311 of the Constitution. It held that the opportunity to make an oral representation was not a necessary postulate of an opportunity to show cause within the meaning of the said Article.

I. M. Lall, for Appellant.

H. N. Sanayal, Additional Solicitor-General of India, for Respondent.

G.R.

Appeal dismissed.

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
15th December, 1959.

C. I. Emden *v.* State of Uttar Pradesh.
Cr. A. No. 68 of 1958.

Prevention of Corruption Act (II of 1947), *section* 4 (1)—*Validity—Article* 14 *of the Constitution—Scope.*

Section 4 (1) of the Prevention of Corruption Act was valid as it was based on a reasonable classification and was related to the object of checking corruption by public servants. The Court held that in the present case it had been established that the appellant acquired gratification other than legal remuneration and hence the presumption was correctly raised against him.

Frank Anthony, for Appellant.

G. C. Mathur, for Respondent.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
16th December, 1959.

Union of India *v.* Bhana Mal Gulzari Mal.
Cr.A. Nos. 36 and 38 of 1955.

Iron and Steel (Control of Production and Distribution) Order, 1941—*Defence of India Rules—Essential Supplies Act—Order fixing prices—Validity.*

The Court observed that the respondents had challenged the validity of the Order but had not attacked the provisions of the Essential Supplies Act under which the Order was made. The Iron and Steel Order, 1941, according to the Court, presented a scheme for regulating business in iron and steel and gave the power of fixing prices to the Controller in furtherance of the scheme. In the opinion of the Court, Clause 11-B of the Order vesting the Controller with these powers was an integral part of the scheme and was valid.

The Court also rejected the contention that the Order fixing the prices contravened the Constitution or was in excess of the powers of the Controller.

C. K. Daphtary, Solicitor-General of India, for Appellant.

N. C. Chatterjee, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
18th December, 1959.

Kamsari Haldar *v.* The State of West Bengal.
Cr. A. No. 204 of 1959.

West Bengal Tribunals of Criminal Jurisdiction Act (1952), *sections* 2 (b) *and* 4 (1) *Proviso—Scope—Penal Code (XLV of* 1860), *sections* 302, 436 *and* 120-*B—Scope.*

By Majority.—There were differences between the procedure prescribed under the West Bengal Tribunals of Criminal Jurisdiction Act and the one provided in the Criminal Procedure Code (V of 1898.)

Majority judgment also opined that the differences were material, were prejudicial to the appellants and were discriminatory in nature. But keeping in view the object of the Act, it was held that the differences were not violative of the rights guaranteed under the Constitution because, " if the disturbances facing the areas in the State had to be controlled and the mischief apprehended had to be checked and rooted out, a speedy trial of the offences was absolutely necessary ". As for discrimination, it was held that the classification made in the Act was rational.

S. K. Acharayya, for Appellant.

S. N. Bose, Advocate-General, West Bengal, for Respondent.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and K. C. Das Gupta, JJ.
18th December, 1959.

Hamdard Dawakhana *v.* Union of India.
Petitions Nos. 3, 62, 63, 80 and 81 of 1959.

Drug and Magic Remedies (Objectionable Advertisement) Act (XXI of 1954)—*Vires of—Article* 19 (1) (f) *and* (g) *and Articles* 14, 21 *and* 31 *of the Constitution—Freedom of speech.*

It cannot be said that the right to publish and distribute commercial advertisement advertising any individual's personal business is a part of freedom of speech guaranteed by the Constitution.

The Court held that a portion of Clause (*d*) of section 3 of the Drug and Magic Remedies (Objectionable Advertisement) Act, 1954, which empowers the executive to specify diseases in addition to those enumerated under the Act, and section 8, which enables the authority to seize any article containing objectionable advertisement, were unconstitutional and void.

K. M. Munshi with *R. Gopala Krishnan,* for Petitioners in Petitions Nos. 80 and 81.

N. C. Chatterjee with *D. N. Mukherjee,* for Petitioners in Petitions Nos. 62, 63 and 3 of 1959.

C. K. Daphtary, Solicitor-General of India, for Respondents.

G.R. —————— *Petitions partly allowed.*

Ananthanarayanan, J.
11th September, 1959.

Gopalaswami *v.* Manonmani.
A.A.O. No. 257 of 1958.

Limitation Act (IX of 1908), *Article* 182 (5), Explanation I—*Scope of—Joint decrees within the scope of article —Tests.*

Interpretation of Statutes—Limitation—Strict interpretation.

In deciding whether a decree is a joint decree or not within the meaning of *Explanation I* of Article 182 (5) of the Limitation Act the decree must be regarded as an integral whole and should not be split up into parts ; and secondly it should be borne in mind that a statute of limitation should be interpreted strictly and according to its grammatical import without the introduction of equitable considerations.

Where the parts of a decree are inseparably intertwined, both as regards the reliefs awarded and as regards the array of parties the mere fact that certain reliefs are granted against all the defendants and certain other reliefs are restricted against some of the defendants, will not make the decree a separate one or separate decrees in parts.

I.L.R. 48 All. 377 ; A.I.R. 1949 Bom. 260, differred.

I.L.R. 30 Mad. 268; (1951) 1 M.L.J. 298; A.I.R. 1937 Cal. 547, followed.

V. V. Raghavan and *S. Bhaskaran,* for Appellant.

G. R. Jagadisan, for Respondent.

R.M. —————— *Appeal dismissed.*

Rajagopalan, J.
18th September, 1959.

Union of India *v.* Arunachalam.
C.R.P. Nos. 169 and 170 of 1959.

Madras Court-fees and Suits Valuation Act (XIV of 1955), *sections* 3 (*ii*), 41 (1) *and* 50—*Suit to set aside an order of Collector allowing a claim petition in proceedings under section* 46 *of the Income-tax Act—Valuation—Order—If an order of civil or revenue Court.*

Income-tax Act (XI of 1922), *section* 46 (2)—*Collector acting under—If a civil or revenue Court.*

In realising arears of income-tax as arrears of land revenue by virtue of the provisions of section 46 of the Income-tax Act the Collector does not constitute a civil or revenue Court. His adjudication on a claim petition in respect of properties attached for recovery of arrears of income-tax will not tantamount to a decision by a civil or revenue Court within the meaning of section 41 (1) of the Madras Court-

fees and Suits Valuation Act. In suits to set aside such orders the residuary provisions, *viz.*, section 50 of the said Act could alone apply for purposes of Court-fee payable.

Section 3 (ii) of the Madras Court-fees and Suits Valuation Act contemplates four classes of Courts, civil, revenue, criminal and any authority or Tribunal having jurisdiction under any special or local law to decide questions affecting rights of parties. A Collector acting under section 46 of the Income-tax Act may be a Court within the meaning of this section. But he will not constitute a civil Court for purposes of section 41 (1) of the Court-fees Act. Nor could the Collector be deemed a civil Court even though he exercises the powers of a civil Court for certain purposes in proceedings under the said section.

C. S. Rama Rao Sahib and *S. Ranganathan*, for Petitioner.

N. R. Raghavachari and The Government Pleader (*K. Veeraswami*), for Respondents.

R.M. ——— *Petition allowed.*

Subramanyam, J. Mohana Krishna Naidu *v.*
28th September, 1959. National Bank of India, Ltd.
C.C.C.A. No. 51 of 1956.

Madras Shops and Establishments Act (XXXVI of 1947), *sections* 41 *and* 45—*Effect of an order setting aside the dismissal of an employee contrary to the Statute—If employee should be deemed to be in service—Jurisdiction of civil Court.*

Master and Servant—Wrongful dismissal—Right of an employee to re-instatement—Relief of declaration that the service is deemed to continue.

It is no doubt true that a termination of service of an employee contrary to the provisions of section 41 (1) of the Madras Shops and Establishments Act will be illegal and section 45 (1) of the Act provides a penalty for such contravention. But the employee would be entitled only to damages for wrongful dismissal.

When an employee resorts to the remedy of prosecution of his employer under section 45 (1) of the Act for contravention of section 41 (1) of the Act it is not open to him to claim relief on the basis that his services have not been dispensed with. Where the services of an employee have been wrongfully terminated it is open to the employee to treat himself as continuing in service and claim salary or he may claim damages for wrongful dismissal. In the former case he will be disabled from seeking employment elsewhere while in the latter case he will be free to do so.

S. Mohan Kumaramangalam and *K. V. Sankaran*, for Appellant.

Messrs. King and Partridge, for Respondent.

R.M. ——— *Appeal allowed.*

Subramanyam, J. Swaminathan *v.* Ayyaswami Iyer.
30th September, 1959. S.A. No. 1022 of 1955.

Limitation Act (IX of 1908), *Articles—Interpretation of.*

In interpreting an Article in the Schedule of the Limitation Act, the words used in all the three columns should be read as a whole. The words used in the third column relating to the time from which the period of limitation begins to run serve very often to explain the scope of the suit described in the first column.

A. V. Narayanaswami Ayyar, for Appellant.

D. Ramaswami Ayyangar, T. V. Balakrishna Ayyar and *N. Vanchinathan*, for Respondents.

R.M. ——— *Appeal allowed.*

Rajagopalan and Rajagopala Ayyangar, JJ. Nanja Raja *v.* Lalitha Ammani.
1st October, 1959. S.T.P. No. 62 of 1958.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 51—*Order in appeal under—If could be reviewed—Appellate Tribunal (High Court)—If* persona designata.

Obiter.—A right of review, like a right of appeal, is wholly statutory and in the absence of specific provisions in the Madras Estates (Abolition and Conversion

into Ryotwari) Act, 1948, or the rules made thereunder, the Special Tribunal (High Court) constituted under section 51 of the Act could not have the power of reviewing its order. The Judges of the High Court in hearing an appeal under the section would be functioning as *persona designata.*

N. C. Vijayaraghavachari and *N. C. Srinivasan,* for Petitioner.

D. R. Krishna Rao and *K. Subrahmanyam,* for Respondent.

R.M. *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ. Somasundara *v.*
24th October, 1959. Kalyanasundara.
A.A.O. No. 282 of 1956.

Madras Agriculturists Relief Act (IV of 1938), *sections* 8 *and* 9—*Scaling down of debt —Scope and extent of—Applicability in cases of renewal of debts—Settlement of account—If debt could be scaled down.*

So long as the identity of a debt remains intact, the debtor is always entitled to take advantage of the scaling down provisions provided in a beneficent legislation like the Madras Agriculturists Relief Act, 1938. The complexity of the circumsstances or intercurrent transactions or passing of additional consideration for the renewed debt, etc., will not make any difference to the applicability of the provisions of the Act so long as the original debt is traceable through the series of transactions. It is only when the identity of the debt is itself destroyed by a renewal in such form that the constituent elements in regard to the prior debt cannot be traced, that the renewed debt becomes the starting point.

The mere fact that there is a settlement of account between the parties will not bar the defendant from claiming the benefit under section 8 or 9 of the Act. If the identity of the debt is traceable it is open to the debtor to go into the prior transactions for purposes of scaling down the debt.

Case-law reviewed.

R. Gopalaswami Ayyangar, for Appellant.

G. R. Jagadisan, K. Raman, T. S. Kuppuswami Ayyar and *T. R. Venkataraman,* for Respondents.

R.M. *Appeal dismissed.*

Ananthanarayanan, J. Logambal *v.* Muthia.
24th October, 1959. Appeals Nos. 336 and 473 of 1956.

Madras Agriculturists Relief Act (IV of 1938), *section* 18—*Costs in suits for recovery of a debt due by an agriculturist filed after the appointed day—Effect of scaling down due to amendment.*

In any suit filed after the 1st of October, 1937 as provided under section 18 of the Madras Agriculturists Relief Act, even though the suit might have been instituted for the proper amount as per the provisions of the Act as it then stood, if the ultimate scaled down amount for which the decree is passed is different, due to amendment of the Act subsequently, the plaintiff will be entitled to costs only on the basis of the scaled down debt. There is no discretion in the Court to import equitable considerations in matters like this.

(1942) 2 M.L.J. 592 explained.

T. Muniswami Reddi, for Appellant in Appeal No. 336 of 1956 and for Respondent in Appeal No. 473 of 1956.

J. R. Gundappa Rao, for Respondent in Appeal No. 336 of 1956 and for Appellant in Appeal No. 473 of 1956.

R.M. *Appeal dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J. Vadivelu Mudaliar *v.*
29th October, 1959. State of Madras.
O.S.A. No. 46 of 1955.

Madras Estates Land Act (I of 1908)—*If applicable to areas formerly outside the limits of the City of Madras but subsequently included in city limits—Rights of Zamindar over beds of abandoned tanks and channels.*

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 18—*Applicability to building sites in estates vested in the Government.*

To ascertain whether a certain enactment applies to a particular case the position as it stands on the date on which the provisions are sought to be applied is material. An Act when originally enacted might be applicable to areas within definite limits but if subsequently certain areas are taken out of the limits, the Act would cease to apply to such areas.

The Madras Estates Land Act is specifically made inapplicable to the Presidency Town of Madras and if on the date on which the provisions of the Act are sought to be applied certain areas formerly outside the Presidency Towns and as such governed by the Act, has become part of the Presidency Town, then automatically the application of that Act would cease to such areas from that date when they came to be so included within the limits of the Presidency Town even though at some time in the past the Act was applicable to the area.

Ordinarily the proprietor of an Estate would be entitled to the beds of abandoned tanks and channels within the limits of the zamindari. Hence a Zamindar could validly give a patta in respect of such lands.

A person who has been lawfully in occupation of the bed of an abandoned channel or tank in an erstwhile zamindari and using it as a building site the appropriate provisions of the Estates Abolition Act applicable to such cases will be section 18.

N. Suryanarayana and *N. Sekhar*, for Appellant.

The Government Pleader (*K. Veeraswami*) and *V. Ramaswami*, for Respondent.

R.M. ——— *Appeal allowed.*

Rajamannar, C.J., and Basheer Ahmed Sayeed, J. Thimmi Ammal *v.* Venkatarama Chetti.
4th November, 1959. L.P. A. No. 86 of 1956.

Hindu Women's Rights to Property Act (XVIII of 1937), *section* 3 (2)—*Rights of a widow under—If liable to be attached and sold in execution of a decree against her.*

The right of a Hindu widow in the joint family property of which her husband was a coparcener, devolving on her under section 3 (2) of the Hindu Women's Rights to Property Act, is liable to be attached and sold in execution of a decree obtained against her, even though the amplitude of the estate is limited.

(1947) 2 M.L.J. 862 : I.L.R. 1942 Mad. 630, followed.

G. R. Jagadisan, for Appellant.

T. L. Nagaraja Rao, for Respondent.

R.M. ——— *Appeal dismissed.*

Somasundaram, J. Public Prosecutor *v.* Sampath Kumar.
10th November, 1959. Cr. Appeal No. 489 of 1959.

Madras District Muncipalities Act (*V of* 1920), *section* 345—*Period of three years—How computed—Prosecution commenced within the period but proceedings stopped under section* 249 *of the Code of Criminal Procedure* (*V of* 1898)—*If could be reopened after the expiry of the period of three years.*

Criminal Procedure Code (*V of* 1898), *section* 249—*Proceedings stopped under and re-opened later—Effect of.*

What section 345 of the Madras District Muncipalities Act requires is that no prosecution for non-payment of tax shall be commenced after the expiration of three years when the prosecution might first have been commenced. Where a prosecution was commenced within the time but proceedings were stopped under section 249 of the Criminal Procedure Code, is re-opened, the mere fact that the period of three years has elapsed in the meantime will not bar the prosecution under section 345 of the Act.

Where a prosecution stopped under section 249 of the Criminal Procedure Code is re-opened, it is not as if the prosecution commences only after the reopening but it is only continuing the original prosecution launched.

M. Narayanamurthy for the Public Prosecutor (*P. S. Kailasam*), for Appellant.

P. Sharaffuddin, M. R. Krishnan and *S. M. Amjad Nainar*, for Respondent.

R.M. ——— *Order set aside.*

Rajagopala Ayyangar, J.
25th November, 1959.

Krishnaveni Ammal *v.* Board of Revenue, Madras.
W.P. Nos. 969 to 971 of 1959.

Madras Cinemas (Regulation) Act (IX of 1955), *section* 10 *and Madras Cinemas Regulation Rules, Rule* 13—*Validity—Scope and applicability of rule—Applicant for licence to be in lawful possession of premises, etc.—Tenant holding over against the assent of the landlord—If a person in lawful possession—Rule* 92 (1)—*Applicability.*

Madras Buildings (Lease and Rent Control) Act (XXV of 1949)—*Applicability to composite leases.*

Rule 13 of the Madras Cinemas Regulation Rules requiring an applicant for a licence to show that he is in lawful possession of the premises, site, etc., is *intra vires* the rule making power of the State Government under section 10 of the Madras Cinemas Regulation Act, 1955 and the rule will apply not only to first applications for license but also to application for renewals of licenses. The licensing authority could properly take into account any change in the situation of the applicant in relation to the property in his possession in respect of which licence is sought for, before a renewal is granted. Having regard to the object of the rule, *viz.*, that there should be no breach of peace as a result of the disputes in regard to the property licensed for exhibiting cinema films, the licensing authority should have regard not only to the situation as on the date of the application for licence or on the date when it will commence to operate, but also during the entire term of the licence. The possession of a lessee who continues in occupation of a leasehold property without the assent of the landlord, express or implied, is not lawful, within the meaning of the rule, even though the possession of the quandom tenant might be protected against private violence.

A composite lease which comprises not merely a building and site but also other machinery and equipments like a cinematographic projector, etc., will be outside the scope of the Madras Buildings (Lease and Rent Control) Act, 1949. But a lessee of a theatre simpliciter, who will be entitled to the protection of the Act, will be in lawful possession of the theatre within the meaning of rule 13 of the Madras Cinemas Regulation Rules, as his continuance in possession of the premises even after the expiry of the lease will be protected as a statutory tenant.

Rule 92 (1) of the Madras Cinemas Regulation Rules requiring an applicant to apply for renewal within one month before the expiry of the previous licence is framed for the convenience of the licensing authority and it is open to the authority to waive the said rule in any case.

Messrs. Row and Reddy, N. C. Rangarajan and *R. Kothandan,* for Petitioners.

The Advocate-General (*V. K. Tiruvenkatachari*), The Additional Government Pleader (*M. M. Ismail*), *T. C. A. Bashyam, T. C. A. Tirumalachari, K. Raghavan* and *G. Krishnamurthi,* for Respondents.

R.M.

Orders accordingly.

Balakrishna Ayyar, J.
28th November, 1959.

The Coonoor Mosque *v.* Abdul Hamid.
C.R.P. No. 1853 of 1959.

Madras Court-fees and Suits Valuation Act (XIX of 1955), *Schedule II, Article* 10 (*k*) —*Court-fees payable on application before sub-Court under section* 7 (2) *of the Rent Control Act.*

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7 (2)—*Application under—Court-fee payable—Rent Controller—If a Court.*

An application under section 7 (2) of the Madras Buildings (Lease and Rent Control) Act, 1949, for eviction of tenant, made before the Subordinate Judge as Rent Controller, is liable to be affixed with a Court-fee stamp of Re. 1 under Article 10 (*k*) (1) of Schedule II to the Madras Court-fees and Suits Valuation Act. The Court-fee payable is not to be determined with reference to the office which the officer, who has been appointed as the Controller holds, nor could the Rent Con-

troller (even though he may be a judicial officer) be deemed a Court for purposes of Court-fee.

P. S. Balakrishna Ayyar, *P. S. Ramachandran* and The Government Pleader (*K. Veeraswami*), for Petitioner.

Respondent not represented.

R.M. ——— *Petition allowed.*

Ramaswami and Ananthanarayanan, JJ. Perumal, *In re.*
2nd December, 1959. R.T. No. 107 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 342-*A—Object of—Validity—If offends against Article* 20 (3) *of the Constitution of India.*

Section 342-A of the Criminal Procedure Code does not offend the rule against self-incrimination provided under Article 20 (3) of the Constitution of India. The object of the section is not to build up a case against an accused from his answers but to test the truth of the prosecution in another way, *viz.*, by the answers furnished by the accused. Having regard to the safeguards provided it cannot be said that the answers given by an accused under the section would tantamount to testimonial compulsion.

P. R. Gokulakrishnan, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. ——— *Appeal dismissed.*

Rajagopala Ayyangar, J. Thayumanavar *v.* Dt. Collector, Madurai.
3rd December, 1959. W.P. No. 765 of 1959.

Madras Cinemas (*Regulation*) *Act* (*IX of* 1955), *section* 11 *and Madras Cinemas Regulation Rules, rules* 14 (2) *and* 109—*Exemption of a site under—Operation and effect of.*

In order to ascertain the scope and effect of an order of exemption granted by the Government under section 11 of the Madras Cinemas Regulation Act, 1955, exempting a particular site from the provisions of the Act or the rules it has to be considered in the light of the representations made to them and the basis on which the exemption was granted.

Though a licence granted under the Act for the running of a touring cinema might expire in one year, an order of exemption granted in respect of the site of a touring cinema might enure beyond the period of one year. When an order of exemption relates to the site, irrespective of the person who conducts the touring cinema on that site, the limit of one year fixed under rule 109 of the Rules would not apply and the licence can be renewed on the basis of the original order of exemption itself.

R. M. Seshadri, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *S. Mohan Kumaramangalam* and *K. V. Sankaran*, for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J. Kewalram *v.* Dr. Jeelani.
5th December, 1959. C.R.P. No. 431 of 1959.

Madras Buildings (*Lease and Rent Control*) *Rules*, 1951, *Rule* 9 (3)—*Setting aside ex parte order—Order dismissing an application for default of appearance of petitioner—If could be restored.*

Sub-rule (3) of rule 9 of the Madras Buildings (Lease and Rent Control) Rules, 1951, relating to setting aside of *ex parte* orders could have no application to cases where a petition has been dismissed for default of appearance of the petitioner.

R. Mathrubutham, for Petitioner.

V. Seshadri and *P. Chinnappa*, for Respondent.

R.M. ——— *Petition allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
12th January, 1960.

J. C. Jain *v.* R. A. Pathak.
C.A. No. 75 of 1956.

Payment of Wages Act (IV of 1926), *section* 17—*Right of appeal against award of Authority exceeding Rs.* 300.

Under section 17 of the Payment of Wages Act an employer had the right of appeal against an award of the authority under the Act, if the awarded sum to be paid collectively to an unpaid group of workers exceeded Rs. 300.

M. C. Setalvad, Attorney-General of India, for Appellant.

K. R. Chaudhary, for Respondents.

G.R. —— *Case remanded.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
14th January, 1960.

R. Muthammal *v.* Subramanyaswami Devasthanam.
C.A. No. 200 of 1955.

Hindu Law—Inheritance—Non-congenital insanity—Evidence of insanity.

In cases arising before the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) lunacy need not be congenital or incurable to exclude the heir from inheritance, at the time when the succession opens. Long and continued course of conduct on the part of the various relatives treating the heir as insane and not of week intellect is sufficient evidence of insanity.

(1920) 38 M.L.J. 291 : I.L.R. 43 Mad. 464, approved.

S. V. Venugopalachari and *M. S. K. Aiyangar,* Advocates for Appellant No. 2.

A. V. Visvanatha Sastri, Senior Advocate, with *Messrs. Gagrat & Co.,* for Respondent No. 1.

G.R. —— *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
15th January, 1960.

Ballabhdas Agarwalla *v.* J. C. Chakravarty.
Cr.A. No. 159 of 1956.

Calcutta Municipal Act, sections 406-407, 488 *and* 537—*Delegating Authority to sanction prosecution.*

By Majority: All orders prior to December 2, 1953, delegating power to sanction prosecution to the Health Officer had lapsed and he was therefore, not competent to sanction appellant's prosecution on that day. It was further held that the Health Officer could not have filed the complaint as an ordinary citizen, the reason being that no proceedings could be instituted under section 537 of the Act except in the manner provided for therein. "It would be against the tenor and scheme of the Act to hold that section 537 is merely enabling in nature and that any private person could institute municipal proceedings under the Act independently of the provisions of the Act."

N. C. Chatterjee, Senior Advocate with *Messrs. S. K. Kapur* and *Nanak Chand Pandit,* for Appellant.

S. C. Mazumdar, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, P. B. Gajendragadkar and K. C. Das Gupta, JJ.
15th January, 1960.

N. Y. L. Narasimhachari *v.* Agasthastheeswaraswami Garu.
C.A. No. 147 of 1956.

Inams—Construction of Inam Statement and Inam Fair Report of 1860*—Specific endowment to a temple or a personal inam—Test.*

On a construction of the documents the Supreme Court held, affirming the judgment of the High Court, that the inam in question was a specific endowment of the suit temple but not a personal inam of the appellant.

When the grant, though it is not directly in favour of the deity but is earmarked for some purpose of the deity (Kalyan Otsavam), there is a specific trust or endowment in favour of the deity.

It is well established that if the grant of inam is to an individual and is burdened with a trust for doing some service the surplus income, if any, left after meeting the expenses of the service, accrues to the benefit of the grantee and his heirs.

In the present case the whole of the income, including the surplus, from the suit inam is to go for the benefit of the trust and for the expenses of the services of the specific endowment (Kalyan Otsavam) but not to the appellants.

K. R. Chaudhary, for Appellants.

T. Satyanarayana for late *N. Subramaniam*, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
19th January, 1960.

Shivji Nathubai *v.* Union of India.
C.A. No. 428 of 1959.

Mineral Concession Rules, Rule 54*—Central Government acts in a judicial capacity.*

As soon as Rule 54 of the Mineral Concession Rules gives to an aggrieved party the right to apply for a review, a lis is created between him and the party in whose favour the grant has been made.

It was held that the Central Government was acting in a judicial capacity while deciding the application under rule 54. It was, therefore, incumbent upon it before coming to a decision to give a reasonable opportunity of being heard to the appellant. As this had not been done, the appellant was entitled to ask the Court to issue a writ of *certiorari*, quashing the impugned order.

N. C. Chatterjee, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondents Nos. 1 and 2.

G. S. Pathak, for Respondent No. 3.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ.
20th January, 1960.

Jagannath Sathu *v.* Union of India.
Writ Petition No. 170 of 1959.

Preventive Detention Act (IV of 1950*), section* 3*—Expression 'Foreign Powers' construed—Constitution (Declaration As To Foreign State) Order.*

The Constitution (Declaration As To Foreign State) Order could not be brought into aid for the purposes of construing the expression foreign powers appearing in section 3 of the Preventive Detention Act. " This expression must be construed in ordinary way and according to its ordinary meaning."

" On a correct interpretation of the meaning of the words, " the relations of India with foreign Powers", we have no doubt that Pakistan must be regarded as a foreign power. . . It has sovereignty in matters of internal administration and external relations quite independent of and disconnected with the sovereignty of India."

" Member nations of the Commonwealth in their relations between each other and nations outside the Commonwealth, must be regarded as foreign powers and their affairs between them as foreign affairs."

R. S. V. Mani, for Petitioner.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Petition dismissed.*

[SUPREME COURT.]

S. K. Das, K. N. Wanchoo and J. C. Shah, JJ.
20th January, 1960.

Alopi Prasad *v.* Union of India.
C.A. No. 693 of 1957.

Contract Act (IX of 1872), *section* 222—*Quantum meruit—Powers of the Arbitrators examined.*

Having regard to the terms of modified agreement between the parties the appellants were not entitled to claim any amount from the respondent under section 222 of the Indian Contract Act or on the basis of quantum meruit. Affirming the decision of the High Court the Supreme Court held that the award of the Arbitrators was rightly set aside.

N. C. Chatterjee, S. K. Kapur, N. H. Hingorani and *Ganpat Rai*, Advocates, for Appellant.

H. J. Umrigar and *T. M. Sen*, Advocates, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
21st January, 1960.

Superintendent, Central Prison, Fategarh *v.* Ram Manohar Lohia.
Cr.A. No. 76 of 1956.

U. P. Special Powers Act of 1932, *section* 3—*Article* 19(1) (*a*) *of the Constitution.*

The section 3 of the U. P. Special Powers Act was inconsistent with the fundamental right of freedom of speech guaranteed under Article 19 (1) (*a*) of the Constitution.

" We cannot accept the argument that instigation of a single individual not to pay tax or public dues is a spark which may in the long run ignite the revolutionary movement destroying public order. Fundamental rights cannot be controlled on such hypothetical and imaginary considerations."

K. L. Misra, Advocate-General, U. P., for Appellant.

N. S. Bindra (Amicus Curiae), for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. J. Imam, J. L. Kapur and K. Subba Rao, JJ.
21st January, 1960.

Champalal *v.* Mst. Samrathbai.
C.A. No. 34 of 1956.

Will—Construction—Adoption—Agreement to refer to arbitration.

Affirming the decision of the High Court the Supreme Court held that the appellant does not get any right under the will unless he is adopted. The will

having merged in the award of the Arbitrators the Court held that the appellant gets no right in the property because he did not offer himself to be adopted by the respondent on the terms stated in the award.

C. B. Aggarwala with *Ganpat Rai*, for Appellant.

S. K. Kapur and *B. P. Maheshwari*, for Respondent.

G.R. ——— *Appeal dismissed.*

Rajagopalan and Ramachandra Iyer, JJ.
7th December, 1959.

United Bleachers Limited, Mettupalayam, Coimbatore Dt. *v.* State of Madras.
T.R.C. Nos. 79 & 80 of 1957.

Madras General Sales Tax Act (IX of 1939), *section* 12-*B* (1) *and rule* 13-*C* (1) *of the Madras General Sales Tax Rules—Proceedings relating to assessment years* 1953-54 *and* 1954-55*—Assessment including the value (cost) of packing materials in a works contract.*

The Petitioners (United Bleachers Limited) were doing bleaching work for various mills and charged a consolidated rate for bleaching and packing the material and sending it back to the mills. The value of the packing materials was charged to sales-tax and this was questioned. The contention of the assessee was that there was no sale of the packing materials as such and that therefore those sales were not liable to be taxed as there was no intention to sell the same.

Held, there was no sale of the packing material and the principal work was only bleaching and packing was incidental thereto and there was no sale express or implied of the packing material and therefore the value thereof was not assessable to sales-tax.

(1950) 2 M.L.J. 449 ; 5 S.T.C. 354 ; 4 S.T.C. 129 ; 7 S.T.C. 26 ; 7 S.T.C. 486 ; 5 S.T.C. 216 ; 9 S.T.C. 353 ; 9 S.T.C. 687, referred to.

V. Tyagarajan for *T. R. Srinivasa Iyer*, for Appellant.

The Government Pleader (*K. Veeraswami*), for Respondent.

R.M. ——— *Petitions allowed.*

Ramaswami and Ananthanarayanan, JJ.
9*th December*, 1959.

Palani, *In re.*
Crl. Appeal No. 309 of 1959.

Penal Code (XLV of 1860), *section* 300, Exception *I—Grave and sudden provocation—What is—Tests—When words alone could constitute such provocation.*

When words alone are relied upon as constituting the defence of grave and sudden provocation under *Exception* I of section 300 of the Penal Code, a certain degree of caution is necessary in the interests of justice. The test of normalcy, *viz.*, how an ordinarily reasonable man would react under the circumstances, must be borne in mind as well as the social class and circumstances of the parties.

T. Govindarajulu, for Appellant.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. *Appeal dismissed.*

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[SUPREME COURT].

B. P. Sinha, C.J., P. B. Gajendragadkar, K. Subba Rao, K. C. Das Gupta and J. C. Shah, JJ.
25th January, 1960.

M/s. J. V. Gokal & Co. *v.* Assistant Collector of S.T. (Inspection).
Petition No. 33 of 1959.

Constitution of India (1950), *Article* 286 (1) (b)—*A sale in the course of import—Exemption from sale tax—Constitution Sixth Amendment Act,* 1956.

The property in goods passed to the Government of India, when the shipping documents were delivered to them against payment. It followed that the sale of the goods by the petitioners to the Government of India took place when the goods were on the high seas.

The sale in question must be held to have taken place in the course of the import into India and therefore, they would be exempted from sales tax under Article 286 (1) (*b*) of the Constitution.

The order of the Assistant Collector of Sales Tax was therefore, set aside.

Purushotamdas Tricum Das, for the Petitioner.

A. V. Vishvanath Shastri, for the Respondents.

N. A. Palkiwala, for Intervener Nos. 1 to 3.

C. K. Daphtary, Solicitor-General of India for Intervener No. 4.

G.R. — *Petition allowed.*

[SUPREME COURT].

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
29th January, 1960.

State of Bombay *v.* Hospital Mazdoor Sabha.
C.A. No. 712 of 1957.

Industrial Disputes Act (XIV of 1947), *Sections* 25-*F* (b) *and* 25-*H—Section* 2 (j)—*Applicability—Hospitals—If "industries."*

On a plain reading of section 25-F (*b*) of the Industrial Disputes Act it was clear that the requirement prescribed by it was a condition precedent for the retrenchment of a workman. It was difficult to concede to the argument that when the section imposed in mandatory terms a condition precedent, non-compliance with the said condition would not render the impugned retrenchment invalid.

" We think that in construing the wide words used in section 2 (*j*) it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by. In our opinion in deciding the question as to whether any activity is an undertaking under section 2 (*j*) the doctrine of '*quid pro quo*' "can have no application ".

" It is the character of the activity which decides the question whether the activity in question attracts the provisions of section 2 (*j*); who conducts the activity and whether it is conducted for profit or not, do not make a material difference. The manner in which the activity is organized or arranged, the condition of the co-operation between employer and employee necessary for its success and its object to render material service to the community are distinctive of activities to which section 2 (*j*) applies."

Applying these tests the Supreme Court held that the High Court of Bombay was right in holding that hospitals were an industry and retrenchment therein was governed by the provisions of the Industrial Disputes Act.

C. K. Daphtary, Solicitor General of India for Appellants.

K. R. Chaudhary, for Respondents.

G.R. — *Appeal dismissed.*

[SUPREME COURT].

P. B. Gajendragadkar and K. C. Das Gupta, JJ. Petlad Turkey Red Dye Works *v.*
3rd February, 1960. Dye Chemical Workers' Union.
C.A. No. 258 of 1958.

Industrial dispute—Working capital—Proof—Evidentiary value of the balance sheet.

The written statement filed before the Tribunal and the figures in the balance sheet were not evidence of the fact that the amounts in question had been used as working capital, but only showed that such a statement had been made. The contention of the appellant was accordingly rejected.

I. M. Nanawati, S. N. Andley and *J. B. Dadachandji,* for Appellant.

B. K. B. Naidu, for Respondents.

I. N. Shroff, for Intervener.

G.R. ——— *Appeal dismissed.*

Rajagopalan and Balakrishna Ayyar, JJ. Harihara Muthu *v.* Rani Subbalakshmi Nachiar.
1st October, 1959. C.R.P. No. 1798 of 1958.

Madras Estates Supplementary Act (XXX of 1956), *section* 11—*Transfer of suits and proceedings from civil Court to the special tribunal—Scope of—Composite suits—Procedure.*

Having regard to the general scheme of the Madras Estates Supplementary Act, 1956, and reading it as a whole it would appear that the question whether a particular area formed part of an estate or whether they are minor inam lands would have to be decided by the tribunal set up under section 5 of the Act. The wording of section 11 of the Act is so comprehensive that all proceedings in which such questions arise for determination shall be transferred to the appropriate tribunal for the determination of such question. The jurisdiction of the tribunal is not restricted only to cases involving the implementation of the Madras Estates Land (Reduction of Rent) Act, 1947, or the Madras Estates Land (Abolition and Conversion into Ryotwari) Act, 1948.

It is no doubt true that the tribunal constituted under the Act is not competent to decide civil suits in which such questions are involved. But section 11 of the Act makes it clear that the transfer of such suits to the tribunal is only for the limited purpose of determining the question whether any particular area is or was an estate or inam estate. It cannot decide any other issue raised in the suit. In such cases, after determination of such issues by the tribunal the suit will have to be re-transferred to the Civil Court.

C.R.P. No. 168 of 1958 and C.R.P. No. 1657 of 1957, overruled.

D. Ramaswami Ayyangar and *P. R. Varadarajan,* for Petitioners.

T. R. Ramachandran, for Respondents.

The Government Pleader (*K. Veeraswami*) for Petitioner seeking to be inpleaded as party.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J. Muthuswami *v.* State of Madras.
1st October, 1959. W.P. No. 939 of 1957.

Madras Land Revenue Surcharge Act (XIX of 1954), *section* 3—*Liability to pay surcharge—How computed in case of joint pattadars.*

Where properties are owned by several persons as tenants in common under a joint patta, the share of the land revenue attributable to each of them according to their respective share should be taken into account to determine the question whether the person would be liable to pay the surcharge under section 3 of the Madras Land Revenue Surcharge Act, 1954. Common enjoyment in the sense of enjoyment of undivided shares is not a criterion to determine the total of land revenue payable for purposes of surcharge under the Act.

S. Thyagaraja Ayyar, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Petition allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
13th October, 1959.

Employees' State Insurance Company
v. Sriramulu Naidu.
L.P.A. No. 128 of 1958.

Employees State Insurance Act (*XXXIV of* 1948), *section* 2 (12)—*Factory—What is—Cinema Studio—If factory—Tests.*

Interpretation of Statutes—Definition of factory in Employee's State Insurance Act—If could be interpreted in the light of the definition in the Factories Act.

A factory within the meaning of section 2(12) of the Employee's State Insurance Act is any physical area in any part of which a manufacturing process is carried on.

Where within the same premises or compound a number of departments are situate and the departments are engaged in the work in connection with or incidental to a manufacturing process of the factory, they would *prima facie* all form part of the factory.

The general rule of interpretation of Statutes is that the meaning and scope of the words occurring in one Statute or judicial decision thereon cannot be used for the interpretation of another statute enacted with a different object or for a different purpose. This rule however may not apply where the statutes are *pari materia* (viz.) related in such a way as to form a system of code or legislation. The Factories Act and the Employees' State Insurance Act are not so related to each other though both of them are intended to benefit the wage earners. The Factories Act is intended to regulate the labour and working conditions of the factory employees as such mainly from the standpoint of the health and safety of the workers. Having regard to the object of the legislation it is reasonable to hold that distinct portions of a factory which are purely clerical establishments, the employees wherein would not be exposed to the dangers and risks of a factory worker, would be outside the purview of the legislation.

The object and scope of the Employees' State Insurance Act is wider and more comprehensive. It is a piece of social security legislation which covers a larger class of employees than legislations such as Factories Act or Workmen's Compensation Act. The term 'Employee' in the Act includes within its scope even clerical labour and part time workers and apprentices. Hence the term 'factory' in the Act should have a wider interpretation than that in the Factories Act.

The scope of the term 'factory' in the Act and the application of the Act cannot be decided on the basis of what the employer does, either for the sake of efficiency or convenience, by dividing a factory into various departments. Provided the statutory requirements of the number of persons employed and the carrying on of a manufacturing process with the aid of power in any part of a premises are satisfied, any premises (*viz.*), a geograptical area within a defined boundary, would come within the scope of the Act. It is not necessary that all the twenty persons (the statutory minimum) should be working in the same section or department nor need a premises be a single building to satisfy the definition of a factory under the Act.

The Government Pleader (*K. Veeraswami*), for Appellant.

V. C. Gopalaratnam and *L. V. Krishnaswami*, for Respondent.

R.M. — *Appeal allowed.*

Somasundaram, J.
27th October, 1959.

Thiruvenkataswami *v.* R.D.O. Coimbatore.
Crl. Rev. Case No. 313 of 1959.
Crl. Rev. Pet. No. 301 of 1959.

Penal Code (*XLV of* 1860), *section* 173—*Refusal to receive a summons—If an offence.*

The gist of an offence under section 173 of the Penal Code consists in intentionally preventing the serving of a summons, etc., as mentioned in the section. A mere refusal to receive a summons, etc., is not an offence punishable under section 173 of the Code.

I.L.R. 5 Mad. 199, referred.

K. Narayanaswami Mudaliar, *R. Rajagopalan* and *T. S. Ramaswamy*, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for State.

R.M. — *Conviction set aside.*

Ramachandra Iyer, J.
28th October, 1959.

Abdul Khader *v.* Assistant Collector of Central Excise, Coimbatore.
W.P. No. 640 of 1959.

Central Excise and Salt Act (*I of* 1944), *section* 2 (k) *and Central Excise Rules, rule* 40—*Wholesale purchaser—If includes a Commission Agent.*

While section 2 (*k*) of the Central Excise Act defines a 'whole sale dealer' the term 'whole sale purchaser' occurring in rule 40 of the Central Excise Rules is not defined either in the Act or the Rules. A commission agent who gets goods from his principal and sells them, would not be liable to pay the duty under rule 40 and in such cases the principal alone would be liable to be proceeded against.

M. R. M. Abdul Karim, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Ramaswami and Ananthanarayanan, JJ.
29th October, 1959.

Paul Verghese & Co. Ltd. *v.* Dhanaliwala.
L.P.A. No. 23 of 1956.

Madras Buildings Lease and Rent Control Act (*XXV of* 1949), *section* 6 (1) (b)—*Refund of excess rent—How computed—Nature of the claim under—Limitation for action.*

The period of one year specified in the proviso to section 6 (1) (*b*) of the Madras Buildings (Lease and Rent Control) Act, 1949, relating to refund of excess rent, must commence from the date of the original order of the Rent Controller fixing the fair rent and any order of the appellate authority in this regard will date back to the order of the Rent Controller.

A suit for recovery of the excess rent as per the proviso will also be a proceeding instituted under the Act and is not an independent action under the general law. It is only an enforcement of a right declared under the Act. Both from the language of the proviso itself and from the express provision in section 20 of the amending Act (VII of 1951) the proviso would apply retrospectively to all cases of claims for refund which were pending on the date of amending Act and not merely to cases arising after the said date.

Messrs. Albuquerque and *Verghese*, for Appellant.

G. R. Jagadisan and *T. R. Ramachandran*, for Respondent.

R.M. ——— *Orders accordingly.*

Balakrishna Ayyar and Subrahmanyam, JJ.
3rd November, 1959.

Arumainayagam *v.* Chokkalingam.
Appeal No. 276 of 1955 and Appeal No. 29 of 1957.

Hindu Law of Inheritance (*Amendment*) *Act* (*II of* 1929), *section* 2—*Applicability—Management of charities which the deceased was managing—If property.*

Sub-section (2) of section 1 of the Hindu Law of Inheritance (Amendment) Act, 1929, does not impose any condition that the property in regard to which the order of inheritance is laid down under the Act should be of such kind that the prepositus had a personal or beneficial interest in it. The heirs enumerated in the Act would inherit all the properties of the prepositus including those such as the right to manage charities. There could not be one set of heirs for the properties in which the prepositus had a personal and beneficial interest and another set in respect of property in which he had no such interest.

(1944) 1 M.L.J. 70 and (1945) 1 M.L.J. 108 referred and explained.

64 L.W. 60 referred.

T. S. Kuppuswami Ayyar, for Appellant and *R. Gopalaswami Ayyangar* and *R. Ekambaram*, for Respondents in Appeal No. 276 of 1955.

R. Ekambaram, for Appellants and *R. Gopalaswami Ayyangar, K. S. Naidu* and *R. Krishnamurthi*, for Respondents in Appeal No. 29 of 1957.

R.M. ——— *Appeal allowed.*

Ramaswami and Ananthanarayanan, JJ. Sankaranarayanan *v.* Lakshmi.
16th November, 1959. A.No. 462 of 1955.

Hindu Adoption and Maintenance Act (LXXVIII of 1956), *section* 25—*Variation of quantum of maintenance—Scope of.*

Practice—Decree for maintenance—Subsequent suit for enhanced maintenance—Enhancement—From what date could be allowed.

In claims for maintenance a Court has ample jurisdiction to grant enhanced maintenance in view of changed circumstances and it is this principle that is now statutorily recognised in section 25 of the Hindu Adoption and Maintenance Act, 1956. Unless a decree for maintenance provides on the face of it a machinery for its own alteration, variation of the quantum of maintenance can be obtained only by a separate suit. In such a suit the Court has power to grant enhanced maintenance from the date of demand. It cannot be said that the Court has no power to grant increased maintenance prior to the date of the suit for variation.

R. Ramamurthy Ayyar and *R. Ramachandran,* for Appellants in Appeal No. 462 of 1955 and Respondents 2 to 4 in Appeal No. 492 of 1955.

P. N. Appuswami and *T. R. Sundaram* for Respondent in Appeal No. 462 of of 1955 and Appellant in Appeal No. 492 of 1955.

P. S. Chandrasekhara Ayyar and *P. S. Ramachandran,* for 2nd and 3rd Respondent in Appeal No. 462 of 1955 and 5th and 6th Respondent in Appeal No. 492 of 1955.

R.M. *Appeal allowed.*

Rajagopala Ayyangar, J. Mahadeva Mudaliar *v.*
16th November, 1959. Commissioner, H.R.& C.E., Madras.
W.P. No. 361 of 1959.

Madras Hindu Religious and Charitable Endowments Act (XIX of 1951), *section* 53 (2) (3)—*Interim arrangement for the administration of a math—Claims of disciples of the math—Failure to consider—Effect on the order of the Board.*

The provisions of section 53 (3) of the Madras Hindu Religious and Charitable Endowments Act, 1951 is mandatory and the Commissioner is bound to take into consideration the claims of the disciples of the math, if any, while making an interim arrangement for the management of a math under section 53 (2) of the Act. An order appointing an outsider for the interim management of a math, while disciples of the math were available and who were not in any way disqualified, will be in contravention of the mandatory provisions of section 53 (3) of the Act.

R. Sundaralingam, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Rule absolute.*

Balakrishna Ayyar and Subrahmanyam, JJ. Narayanaswami *v.* Renuka Devi.
17th November, 1959. Appeal No. 75 of 1956.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *sections* 9 *and* 12-*B*—*Execution of order of eviction—Removal of obstruction proceedings—Nature of—Finality of order—Suit to set aside summary order—Maintainability—Applicability of the provisions of Civil Procedure Code to execution proceedings under Rent Control Act.*

Though a Controller who passes an order of eviction under section 7 of the Madras Buildings (Lease and Rent Control) Act, 1949, is not a civil Court, when once such an order is before a civil Court in execution the provisions of the Code of Civil Procedure relating to execution would apply to such proceedings in execution except to the extent to which such procedure is modified by any express provisions of the Rent Control Act.

Having regard to the limited object and scope of the orders under the Madras Buildings (Lease and Rent Control) Act, 1949, the proviso to section 9 of the Act expressly bars an appeal under section 47 of the Civil Procedure Code in matters relating to execution of such orders. But in regard to orders passed in proceeding under Order 21, rules 97 to 103 of the Code the procedure is not in any way modified and a suit to set aside a summary order in execution under the Act is maintainable under Order 21, rule 103 of the Code.

K. S. Ramabadra Ayyar, for Appellants.

T. R. Srinivasa Ayyangar, for 1st Respondent.

R.M. *Appeal dismissed.*

Rajagopala Ayyangar, J.
9th December, 1959.

Railway Employees' Co-operative Society, Ltd., Madras *v.* Labour Court, Madras.
W.P. No. 648 of 1959.

Industrial Disputes Act (XIV of 1947), section 33-C (2)—Jurisdiction of tribunal under—Scope and extent of—Benefits claimed by workmen outside the Industrial Disputes Act—If could be evaluated in money.

The jurisdiction of a tribunal or of a labour Court under section 33-C (2) of the Industrial Disputes Act extends to the computation in terms of money not merely all benefits which workmen are entitled to receive from the employer under a settlement or award under the Industrial Disputes Act, but also to any benefit to which they might be entitled to in their character as workmen under contract or by virtue of any other enactment such as the Shops and Establishments Act.

G. Vasantha Pai and *D. Padmanabha Pai,* for Petitioner.

K. V. Sankaran and *S. Ramaswami,* for Respondent.

R.M. *Petition dismissed.*

Rajagopala Ayyangar, J.
9th December, 1959.

Columbia Films of India Ltd. *v.* Commissioner, Corporation of Madras.
W.P. Nos. 772 to 774 of 1959.

Madras City Municipal Act (IV of 1919), section 110 and Schedule IV, Part II, rule 7—Proviso—Effect of.

The proviso to rule 7 of Part II, Schedule IV of the Madras City Municipal Act relating to the levy of tax on companies whose head office is outside the city, is designed as a concession to the assessee and to afford relief against the hardship which an assessment on the basis of paid up capital might involve in cases where the business carried on within the city by a company, whose principal office is outside the city, is only nominal. The proviso is not intended to be an alternative method of assessment which the municipality could resort to at its option.

V. C. Gopalaratnam and *L. V. Krishnaswamy Ayyar,* for Petitioner.

T. Chengalvarayan, for Respondent.

R.M. *Rule absolute.*

Rajagopala Ayyangar, J.
9th December, 1959.

McKenzies Ltd. *v.* Labour Court, Madras.
W.P. No. 454 of 1958.

Industrial Disputes Act (XIV of 1947), section 25-FFF—Closure of an establishment—What amounts to.

In order to constitute a closure of an establishment within the meaning of section 25-FFF of the Industrial Disputes Act, it should be a complete closure in the sense that there is no work remaining to be done after the termination of the employment of the workmen. Even if the work is continued in order to complete the work already undertaken it will not be a closure.

S. V. B. Row and *K. Srinivasan,* for Petitioner.

B. Lakshminarayana Reddi, for Respondent.

R.M. *Petition dismissed.*

Subramanyam, J.
11th December, 1959.

Mohd. Badsha *v.* Doraiswami.
A.A.A.O. No. 80 of 1958.

Madras Cultivating Tenants Protection Act (XXV of 1955), sections 4 and 6 and 6-A—Power of Civil Court to order restitution before transferring a suit or proceedings to the Revenue Court.

Section 6-A of the Madras Cultivating Tenants Protection Act does not by itself effect an automatic transfer of the suits referred to therein from the civil Court to that of the Revenue Divisional Officer without an order of transfer being made by the civil Court on whose file such suits or proceedings are pending. Hence where a suit or proceeding is pending on the file of a civil Court it is open to that Court to make an order for restitution to possession to the aggrieved party before transferring the suit to the Revenue Divisional Officer under section 6-A of the Act and sections 4 and 6 of the Act will not bar the civil Court from making such an order.

T. Krishnaswami Ayyangar, for Appellant.

V. V. Raghavan, for Respondent.

R.M. *Appeal dismissed.*

Rajamannar, C.J. and Basheer Ahmed Sayeed, J. R.D.O., Salem *v.* Krishnamurthi.
25th November, 1959. W.A. No. 62 of 1957.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 3—*Order allotting a house to Government servant already in possession of a residence—If invalid—Notice of requisition—Form of.*

Sub-section (3) of section 3 of the Madras Buildings (Lease and Rent Control) Act, 1949, does not state as to when and in what circumstances the State Government or the authorised officer would be justified in intimating to the landlord that a building is required for the purposes mentioned in that section. Hence barring cases of *mala fides* it is not open to a Court to say that an order of requisition under the section was not justified. There is no limitation imposed under the Act that an order of requisition of a building could be made for the occupation of a Government servant only if the concerned officer was not in possession of a house already. So long as a building is required *bona fide* for the occupation of a Government servant the authorised officer is justified in making a requisition and it is not the province of a Court to investigate or hold whether in any particular case the officer was justified in making the requisition.

A notice of requisition under the section should however expressly intimate to the landlord the purpose for which the building is required. Further sub-section (3) of section 3 contemplates only one order requisitioning a building for any of the purposes mentioned therein and the authorised officer is not entitled to make a series of orders without any reference to the period of ten days specified. Where there is no effective or valid order passed within the period of ten days, no such order could be passed after the expiry of the period under section 3 (3) of the Act.

The Additional Government Pleader (*M. M. Ismail*), for Appellant.

R. Ramamurthi Ayyar, for Respondent.

R.M. *Appeal dismissed.*

Subrahmanyam, J. Manonmani Ammal *v.* Lakshmanan Chettiar.
1st December, 1959. C.R.P. No. 1612 of 1959.

Civil Procedure Code (V of 1908), *section* 146 *and Order* 34, *rule* 5—*Purchaser of mortgaged property during the pendency of a suit to enforce the mortgage—If could make a deposit under.*

Order 34, rule 5 of the Code of Civil Procedure read with section 146 of the Code would enable a purchaser of the hypotheca, from the defendant during the pendency of a suit to enforce the mortgage, to make a deposit of the money as provided under the rule, though a person who does not derive title from the judgment-debtor cannot claim the benefit of the said rule.

G. R. Jagadisan and *T. S. Srinivasan,* for Petitioner.

R.M. *Petition dismissed.*

Ramaswami and Ananthanarayanan, JJ. Venugopal *v.* T.U.C.S., Ltd.
3rd December, 1959. C.C.A. No. 52 of 1956.

Civil Procedure Code (V of 1908), *Order* 9, *rule* 8—*Suit dismissed for default—Conditional order of restoration—Default clause—Effect of.*

Where a Court passes an order under Order 9, rule 8, Civil Procedure Code, directing the restoration of a suit dismissed for default on condition of payment of costs to the opposite party before a specified date and provides that in default of such payment the application will stand dismissed the Court no longer remains seized of the application but becomes *functus officio.*

A.I.R. 1956 All. 477, referred.

T. R. Venkataraman and *T. R. Sangameswaran,* for Appellant.

B. V. Viswanatha Ayyar, for Respondents.

R.M. *Appeal dismissed.*

Rajamannar, C.J. and Ganapatia Pillai, J.
21st January, 1960.

B. & C. Company Ltd., Madras
v. Industrial Tribunal, Madras.
S.C.M. P. No. 137 of 1959.

Constitution of India (1950), *Article* 133 (1) (*c*)—*Leave to appeal to Supreme Court—Considerations—Granting conditional leave that the cost of appeal should be borne by one party in any event—Propriety.*

Except with the consent of parties it is not open to the High Court in granting leave to appeal to Supreme Court under Article 133 (1) (*c*) of the Constitution to make an order that leave will be granted on condition that the costs of the appeal should be borne by one of the parties in any event. But in a case where it is in the discretion of the High Court to certify that a case is a fit one for appeal it will not be improper for the Court to consider whether the question involved is equally important to both sides to warrant the Court to put the respondents to the expenses of an appeal to the Supreme Court. Though a point may be of general importance it may not be of sufficient importance to the proposed respondent to warrant the expenses of an appeal and in such cases it is open to the High Court to refuse leave unless the applicant seeking such leave is willing to bear the costs of the appeal in any event.

44 M.L.J. 217 (F.B.), followed.

Messrs. King and Partridge, for Petitioner.

S. Mohan Kumaramangalam, for Respondent.

R.M. ——— *Petition dismissed.*

Rajamannar C.J. and Basheer Ahmad Sayeed, J.
3rd February, 1960.

O. M. Prakash Gupta *v.*
Commissioner of Police, Madras.
W.A. No. 151 of 1959 and others.

Madras Cinemas Regulation Rules (1957), *rule* 13—'*Lawful possession of the site, building and equipment*'—*What amounts to—Tenant holding over against the desire of the landlord—If in lawful possession—Decision of licensing authority—When could be questioned in civil Court.*

Constitution of India (1950), *Article* 226—*Licensing of premises—Decision of licensing authority that he is not satisfied about the applicant's possession of the premises—When could be questioned.*

A lessee in possession of a premises, the lease in whose favour has expired, and who is not entitled to any protection under the Madras Buildings (Lease and Rent Control) Act, 1949, is one who is not legally entitled to be in possession though it may be that he cannot be ousted from the premises without recourse to a Court of law. Where the licensing authority under the Madras Cinemas Regulation Act, 1957, is not satisfied that the applicant for license is in lawful possession of the building within the meaning of rule 13 of the Madras Cinemas Regulation Rules, 1957, he can refuse to grant the licence. Barring exceptional cases of *prima facie* perverse orders of refusal it is not within the province of the High Court under Article 226 of the Constitution to examine the correctness of the view taken by the licensing authority whether the applicant is in lawful possession of the premises, equipment, etc. Unless it is established that the licensing authority is compelled by any statutory provision to grant or renew the license no writ of *mandamus* could lie in that regard.

R. M. Seshadri, for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*), *N. C. Raghavachari*, *N. S. Varadachari* and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. *Appeal dismissed.*

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[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
9th February, 1960.

S. S. Light Rly., Co., Ltd. *v.* Upper Doab Sugar Mills Ltd.
C.A. No. 347 of 1957.

Railways Act (IX of 1890), *section* 32—*Jurisdiction of the Tribunal to investigate.*

The Railway Rates Tribunal had no jurisdiction to investigate the reasonableness or otherwise of the increase in terminal charges made by the Company for carrying sugarcane for the Upper Doab Sugar Mills Ltd., Shamli (U.P.).

" Terminal charges " were leviable and the charges of Rs. 4-69 sought to be levied by the Railway Administration in addition to the charges for carriage was " terminal charges " within the meaning of the Railways Act. The proposed levy being in accordance with the Government notification under section 32 of the Railways Act was nothing more than the application of standardized terminal charges.

H. N. Sanyal, (Additional Solicitor-General of India), for Appellant.

N. C. Chatterjee, for Respondent No. 1.

B. K. Khanna, for Respondent No. 2.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
9th February, 1960.

Kundan Sugar Mills *v.* Ziauddin.
C.A. No. 136 of 1958.

Industrial Disputes Act (XIV of 1947)—*The transfer of employees from one Mill to another Mill—Right of the Management—Dismissal on disobediance of order by the workmen.*

The two factories were distinct and independent concerns, though owned by the same employer. It was not a condition of service of employment of the workmen, either express or implied, that the employer had the right to transfer them to a new concern.

Upholding the order of the Labour Appellate Tribunal the Supreme Court directed the re-instatement of four workmen who had been dismissed by the appellant from service on the ground that they had disobeyed the order of transfer to a new factory started by the appellant.

R. L. Anand, for Appellant.

B. D. Sharma, for Respondents Nos. 1 to 5.

C. P. Lall and *D. N. Dixit,* for Respondent No. 6.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
10th February, 1960.

Nagpur Corporation *v.* Employees.
C.A. Nos. 143 and 144 of 1959 and 545 of 1958.

Industrial Disputes—C. P. & Berar Disputes Settlement Act, 1947—*Vires of Act—Section* 214—*Definition of ' Industry '—City of Nagpur Corporation Act,* 1948.

Following earlier decisions in (1953) 1 M.L.J. 195 : (1953) S.C.J. 19 : 1953 S.C.R. 302 and (1957) S.C.J. 95 : 1957 S.C.R. 33, the Court held that the C. P. & Bihar Disputes Settlements Act is not invalid, as it was in pith and substance a law n respect of industrial and labour disputes and conservancy services rendered by the Municipality was an industry and the disputes between the Municipality and the employees of the conservancy department was an Industrial Dispute within the meaning of the Disputes Settlement Act.

C. B. Aggarwala, for Appellants in all the appeals.

A. V. V. Shastri for Respondents 1 and 2 in all appeals.

H.R. Khanna, for Respondent No. 3 in C.A. No. 144 of 1959.

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
12th February, 1960.

Rohtas Sugar Mills *v.* Workmen.
C.A. Nos. 717-742 of 1957.

Industrial Disputes Act (XIV of 1947)—*Unskilled workers.*

In the Court's opinion, for alleviating the distress of unskilled workmen in the sugar factories concerned, it would be better if their wage structure was raised, keeping an eye on the fact of their unemployment for a part of the off-season at least than to pay a retaining allowance for the entire off-season.

" We have no doubt that such a claim will be sympathetically considered by the wage board, especially as the employers have, through their counsel, recognized before us the reasonableness of their claim."

A. B. N. Sinha, for Appellants in all appeals.

L. K. Jha, for Respondents Nos. 1, 4, 5, 7, 8, 10, 14, 15, 21, 24, 26 to 30.

P. K. Chatterjee, for Respondents Nos. 6, 9, 12, 17, 20, 22, 23, 25, 31 & 32.

L. K. Jha, for Intervener.

G.R. — *Order accordingly.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
12th February, 1960.

Sm. Nagendra Bala Mitra *v.* Sunil Chandra Roy.
Cr. A. No. 170 of 1956.

Criminal Trial—Verdict of jury—Misdirection on question of law or fact in the charge to the jury.

By Majority.—Court could not find any trace of a double standard, or of serious misdirection, on any question of law or fact in the charge to the jury. The verdict of not guilty, although by majority but accepted by the trial Court and upheld by the High Court should not be set aside.

Purshottamdas Tricumdas, for Appellants.

N. C. Chatterjee and *R. L. Anand*, for Respondent.

A. C. Mitra, for Respondent No. 2.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, J. L. Kapur and M. Hidayatullah, JJ.
17th February, 1960.

C.I.T. Bombay, *v.* Chandulal Keshavlal & Co.
C.A. No. 167 of 1958.

Income-tax Act (XI of 1922), *section* 10—*Deductible allowance—Question of fact—Appellate Tribunal—Jurisdiction of—Interference.*

It was a question of fact in each case whether any amount which was claimed as a deductible allowance had been spent wholly and exclusively for the purpose of the business of the assessee. The decision of such a question of fact was for the Income-tax Appellate Tribunal and since the Tribunal had arrived at such a conclusion, the finding could not be disturbed.

C. K. Daphtary, Solicitor-General of India, for Appellant.

N. A. Palkiwala, for Respondent.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
22nd February, 1960.

Tinnevelly-Tuticorin Elec. Supply Co. *v*, Workmen.
C.A. No. 23 of 1958

Industrial Disputes Act (XIV of 1947)—*Electricity Act (IX of* 1910)—*Bonus—Full Bench formula.*

" Just as the problem of wage structure has to be solved in the case of electricity concerns apart from the provisions of the Electricity Aci and in the light of the rele-

vant industrial principles, so must the problem of bonus be resolved in like manner. There is really no conflict between the Act and the principles of industrial adjudication. In fact they cover different fields and their relevance and validity is beyond question in their respective fields ".

The Labour Appellate Tribunal was right in coming to the conclusion that the claim for bonus by the workmen must be governed by the Full Bench formula. The amount paid by way of bonus was an expenditure admissible under the Indian Electricity Act.

A. V. V. Shastri, for Appellant.

T. S. Venkataraman, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ.
23rd February, 1960.

Balwant Singh *v.* Lakshminarayanan.
C.A. No. 411 of 1959.

Representation of People Act (XLIII of 1951)*—Full particulars of corrupt practice—Necessity—Providing conveyance to voters—Corrupt practice.*

Hiring of vehicles for procuring conveyance for voters to polling booth was a corrupt practice. Insistence upon full particulars of corrupt practices was undoubtedly of paramount importance in the trial of an election petition and the appellate Court may be justified in setting aside the judgment of the Election Tribunal if it is satisfied that the absence of the full particulars had caused material prejudice. Therefore on merits of the case the Supreme Court upheld the decision of the High Court that the appellant had committed corrupt practice and declared his election void.

L. K. Jha with *Rama Reddy*, for Appellant.

G. S. Pathak with *P. C. Aggarwala* and *R. Patnaik*, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT]

B. P. Sinha, C.J., S.J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ.
24th February, 1960.

State of Madhya Pradesh *v.* Moradhwaj Singh.
C.A. Nos. 40-110 of 1955.

Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, *sections* 22, 37 *and clause* 4 *of the Schedule to the Act—Article* 14 *of the Constitution of India* (1950)*—Section* 9 *of the Civil Procedure Code* (*V of* 1908).

" It was not possible to infer that the Vindhya Predesh Abolition of Jagirs and Land Reforms Act, 1952, was a colourable piece of legislation. Furthermore no discrimination could result from it."

Clause 4 of the Schedule to the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, which provides for the method of computing compensation, could not be declared, in the circumstances, as depriving the jagirdars of their proprietary interest. " It cannot be said that this clause provided for taking land from the jagirdars without paying any compensation."

It was not proper for the Judicial Commissioner to ascribe motives to the legislature, such as by saying that "the provisions were made to create inconvenience to a class whom the legislature did not like."

The Supreme Court held that sections 22 and 37 of the Act and clause (4) of the Schedule to the Act were valid and constitutional,

C. K. Daphtary, Solicitor-General of India, for Appellants in C. As. Nos. 40 to 109 of 1955 and for Respondent State in C.A. No. 110 of 1955.

K. B. Asthana, S. N. Andley and *J. B. Dadachanji*, for Respondents and for Appellant in C.A. No. 100.

G.R. ——— *Appeals* 40 *to* 109 *allowed and Appeal No.* 110 *dismissed.*

[SUPREME COURT]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo, and J. C. Shah, JJ.
26*th February*, 1960.

Mohd. Dastagir *v.* State of Madras.
Cr. A. No. 137 of 1957.

Constitution of India (1950), *Articles* 20 *and* 22—*High Court's power to interfere with the acquittal.*

The facts of the present case did not show that the appellant was compelled to produce the currency notes and there had not been any violation of the provisions. The reasons given by the trial Court for disbelieving the evidence of the Deputy Superintendent of Police were perverse and the High Court was fully justified in setting aside his decision.

C. B. Aggarwala, for Appellant.

R. Ganpathy Aiyar, for Respondent.

C. K. Daphtary, Solicitor-General of India, for the Intervener.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam and J. C. Shah, JJ.
26*th February*, 1960.

Rabari Ghela Jadav *v.* State of Bombay.
Cr. A. No. 14 of 1959.

Criminal Procedure Code (*V of* 1898), *sections* 421 *and* 422—*Scope—High Court's powers.*

Under sections 421 and 422 of the Criminal Procedure Code the High Court is given powers to dismiss an appeal summarily, or alternatively to admit it and give notice to the parties and to the State. Where an appeal is not dismissed summarily then the High Court must proceed to hear the full appeal and it has no power to dismiss it summarily in part and hear the remaining issues.

" The form of the order admitting the appeal in the instant case was invalid and the appellant could have insisted that since the appeal had not been summarily dismissed, the High Court should hear his appeal on merits ".

[The Supreme Court itself examined the evidence in the case and held that the guilt of the accused has been established.]

P. K. Chatterjee, for Appellant.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and K C. Das Gupta JJ.
1*st March*, 1960.

Swadeshamitran *v.* Workmen.
C.A. No. 483 of 1958.

Industrial Disputes Act (*XIV of* 1947)—*Retrenchment formula*—" *Last come first go* "—*Unfair labour practice.*

The employer was at liberty to keep in view the efficiency and trustworthy character of his employee at the time of effecting retrenchment but whenever the principle of " last come, first go " is departed from, the employer must satisfy the tribunal that the departure was justified ; otherwise it would be open to the tribunal to treat such retrenchment as an unfair labour practice and give relief to the worker.

M. C. Setalvad, Attorney-General of India with *R. Ganapathy Iyer*, for Appellants.

President, City Printing Press Workers' Union, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar and K. C. Das Gupta, JJ.
3rd March, 1960.

Associated Cement Co. *v.* Workmen.
C.A. No. 404 of 1958.

Industrial Disputes Act (XIV of 1947), *sections* 18 *and* 19—*Registered Trade Union's right to terminate award—Union of minority—Right.*

On a consideration of sections 18 and 19 (6) of the Industrial Disputes Act:

Held :—"A minority union of workers has a right to ask for termination of an award. If an industrial dispute can be raised by a minority of workmen or by a minority union why should it not be open to a minority of workmen or a minority union to terminate the award, which is passed on reference made at their instance ".

M. C. Setalvad, Attorney-General of India, for Appellant.

Janardhan Sharma, for Respondent.

G.R. *Appeal dimissed.*

Rajagopalan and Ramachandra Iyer, JJ.
16*th November,* 1959.

Mir Mohd. Ali *v.* Commissioner of Income-tax, Madras.
R.C. No. 82 of 1956.

Income-tax Act (XI of 1922), *section* 10 (2) (*vi*) *and section* 10 (2) (*vi*) (*a*)—*Depreciation admissible under—Diesel engine fitted to a motor vehicles in replacement of existing engines—Additional depreciation—If could be claimed—'Machinery'—What is.*

Words and Phrases—' Machinery '—What is.

In the absence of a statutory definition the normal meaning of the word ' machinery ' should be given to the expression in section 10 (2) (*vi*) of the Income-tax Act and the word must be given the same meaning in both the sub-sections, *viz.*, section 10 (2) (*vi*) and section 10 (2) (*vi*) (*a*). A diesel engine fitted to a motor vehicle is ' machinery ' within the meaning of the section. Machinery does not cease to be so merely because it has to be used in conjunction with one or more machines nor does it cease to be machinery merely because it is installed as part of a manufacturing or industrial plant.

(1959) 37 I.T.R. 142, differed.

Hence an assessee is entitled to the claim of depreciation both under section 10 (2) (*vi*) and section 10 (2) (*vi*) (*a*) of the Income-tax Act in cases where he has fitted diesel engines to his motor vehicles in replacement of the existing engines and the fact that the diesel engines were part of the motor vehicle is not relevant in deciding the claim for depreciation allowance. The diesel engines being ' machinery ' the assessee will be entitled to claim the statutory allowance for depreciation.

S. Swaminathan, for Applicant.

C. S. Rama Rao Sahib, for Respondent.

R.M. *Answer accordingly.*

Rajamannar, C.J., and Basheer Ahmed Sayeed, J.
16*th November,* 1959.

State *v.* B. G. P. Lorry Service.
W.A. No. 3 of 1957.

Workmen's Compensation Act (VIII of 1923), *section* 8 (1)—*Compensation for injury resulting in death of workman—Direction to deposit—Payment directly to the party claiming—If sufficient discharge of the liability.*

Where the Commissioner for Workmen's Compensation makes an order under the Workmen's Compensation Act, directing an employer to deposit the compensation amount due in respect of an accident caused to a workman resulting in his death it is not a sufficient discharge of the liability of the employer if the compensation is paid directly to any person. The reason is that the term 'dependant' under the Act includes several relations of the deceased workman, who may not strictly be heirs of the deceased under the personal law applicable to him, and the Commissioner is expected to safeguard the interests of all the dependants. Hence the pay-

ment of the compensation amount, directed to be deposited to the widow of the deceased workman, would not amount to a discharge of the liability of the employer and the Commissioner is entitled to take proceedings to recover the amount from the employer notwithstanding such payment.

The Additional Government Pleader (*M. M. Ismail*), for Appellant.

N. C. Raghavachari and *V. Devarajan*, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami and Ananthanarayanan, JJ. Kulanthaivelu *v.* Muthu Chellappa.
25th November, 1959. L.P.A. No. 58 of 1956.

Civil Procedure Code (*V of* 1908), *Order* 21, *rule* 46—*Execution—Attachment of moveable property—Decree of Court—If movable property.*

A decree of Court cannot be included as a 'movable asset' for purposes of execution under the Civil Procedure Code. The term 'movable property' for purposes of attachment in execution is used in relation to concrete movable goods and not in relation to intangible assets like a decree of Court.

R. Gopalaswami Ayyangar, for Appellant.

T. R. Srinivasan and *R. Desikan*, for Respondents.

R.M. ——— *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ. Trustees, Port of Madras *v.* State.
27th November, 1959. S.A. No. 1106 of 1956.

Madras General Sales-tax Act (*IX of* 1939), *section* 2 (b) *and section* 18—*Dealer—Port of Madras supplying water to ships calling at the port at stipulated rates—If a dealer within the meaning of the Act and if liable to sales-tax on the sale of water—Bar of suit—When applicable.*

In supplying water to the ships that call at the Port of Madras the trustees are only discharging a statutory duty imposed on them and are not carrying on any business with a view to make profit so as to make them a dealer within the meaning of section 2 (*b*) of the Madras General Sales-tax Act, 1939. The bar of suit under section 18 of the Act will not apply to cases of recovery of amount illegally collected as sales-tax by the Authorities.

V. V. Raghavan and *V. P. Raman*, for Appellant.

The Government Pleader (*K. Veeraswami*) and *G. Ramanujam*, for Respondent.

R.M. ——— *Appeal allowed.*

Subrahmanyam, J. Meenakshi Achi *v.* Nallappan Chettiar.
1st December, 1959. C.M.P. No. 7462 of 1959.
A.A.A.O. No. 36 of 1957.

Madras Agriculturists Relief Act (*IV of* 1938)—*When applicable to debts incurred in former Pudukottai State.*

In relation to a debt incurred in 1937 in the territory of the former Pudukottai State (since merged in Madras State), the debtor would not be entitled to the benefits of the Madras Agriculturists' Relief Act, 1938, unless he satisfies the requirements of the definition of 'agriculturist' according to the apparent tenor of the definition, *i.e.*, he should not come within the exclusion of persons paying building tax in the specified areas within two years prior to 1st October, 1937. The period of two years cannot be construed with reference to the date of merger of the State.

R. Desikan and *R. Viswanathan*, for Petitioner.

V. Rathnam, for Respondent.

R.M. ——— *Petition dismissed.*

Subrahmanyam, J. Meenakshi Achi *v.* Nallakaruppan Chettiar.
1st December, 1959. A.A.A.O. No. 36 of 1957.

Madras Agriculturists' Relief Act (IV of 1938), *section* 19 (2) *and Madras Agriculturists' Relief (Amendment) Act (XXIII of* 1948), *section* 16—*Combined effect of*—Ex parte *decree after the commencement of the Amending Act—If could be scaled down by independent application.*

The principle of constructive *res judicata* has been expressly held to be inapplicable to applications under section 19 (1) and (2) of the Madras Agriculturists' Relief Act for scaling down of decrees and an application for such scaling down could be entertained at the stage of execution proceedings even though the relief was not asked for at the time of the decree. But where the relief was expressly asked for and refused on merits at the time of the hearing of the suit it could not be granted subsequently on an independent application. Even in a case where an express allegation is made in the plaint that the debtor is not entitled to the benefits of the Act and such allegation is not refuted by the defendant at that stage, it is open to defendant to apply under section 19 (1) or (2) of the Act to obtain the relief after the passing of the decree.

R. Viswanathan, for Appellant.

S. Somasundaram and *V. Ratnam,* for Respondent.

R.M. ——— *Appeal dismissed.*

Ananthanarayanan, J. Palaniappa Chettiar *v.* Vairavan Chettiar.
4th December, 1959. Appeal No. 243 of 1956.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 2 (1) *(a)*—*'Building.'—Lease of building and vacant site appurtenant—Lessee to erect further structure—If lease of a building—'Appurtenant'—Meaning of.*

Where a site is leased for the purpose of cinema theatre and it is established that there has been such a structure on the property, whether erected by the lessor or lessee the mere fact that the parties contemplated that further necessary structure should be put up would not take away the subject of the lease from the definition of building in section 2 (1) *(a)* of the Act.

The word 'appurtenant' includes all structures or property abetting or adjacent to the main tenement or property, which are proper and necessary for its due enjoyment.

K. S. Desikan and *K. Raman,* for Appellants.

K. S. Ramamurthi, R. M. Seshadri, K. G. Kannabiran and *K. Sarvabhauman,* for Respondent.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J. Purasawalkam Hindu, etc., Nidhi *v.* Thirugnanam.
11th December, 1959. W.P. No. 702 of 1959.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 41 (1)—*Scope and nature of an enquiry under.*

Master and Servant—Employee of a limited company also being a shareholder—If could claim greater privilege than an employee.

A paid employee of a company, who happens to be a share-holder also of the company, cannot enjoy any higher rights than as a paid employee of any individual proprietor nor can he claim a larger liberty of action than employees who are not shareholders. The service rules of a company may make special provisions precluding employees from carrying on an agitation as shareholders. But the absence of such provision does not enlarge the employees' freedom of action or entitle them to commit acts which are inconsistent with their conduct as employees.

The scope of an enquiry under section 41 (1) of the Madras Shops and Establishments Act is determined by the charges made. Where the charges as framed are

not made out, but in the course of the inquiry it is found that the employee is guilty of some other charge, a fresh charge should be made and another inquiry held. Any dismissal of any employee without such further enquiry will be contrary to section 41 (1) of the Act. Similar will be the position in case of an inquiry under section 41 (2) of the Act before the Appellate Authority. The quantum of punishment to be inflicted is however for the management to decide and not for the appellate authority.

The Advocate-General (*V. K. Thiruvenkatachari*), *V. V. Raghavan* and *V. Srinivasan*, for Petitioner.

K. V. Sankaran and *S. Ramaswami*, for Respondent.

R.M. — *Petition dismissed.*

Rajagopalan and Ramachandra Iyer, JJ. Abdul Subhan and Co *v.* State.
1st December, 1959. W.P. No. 400 of 1957.

Madras General Sales-tax (Turnover and Assessment) Rules, 1939, *Rule* 16, *as amended in* 1955—*If invalid as opposed to Article* 304 *of the Constitution of India* (1950).

Constitution of India (1950), *Articles* 301 *and* 304—*Scope of—Discriminatory taxation—When prohibited.*

Rule 16 of the Madras General Sales-tax (Turnover and Assessment) Rules as re-enacted in 1955 under G.O. (P.) No. 2733, Rev., dated 3rd September, 1955, does not contravene Article 304 (*a*) of the Constitution of India and is valid.

Article 304 (*a*) of the Constitution of India which prohibits discriminatory taxation could not be construed in such a manner which will have the effect of nullifying the freedom of inter-State trade guaranteed under Article 301 of the Constitution of India. Article 304 (1) contemplates a ban on all heads where discriminatory taxation is possible as otherwise the freedom of inter-State trade guaranteed under Article 301 could be fettered by taxation. Having regard to the object of the two articles in the Constitution no discriminatory power of taxation is vested in any State on goods imported from the other States either at the point of import or at any subsequent stage. No State could levy tax on goods, having its origin in a different State, at any stage of its existence in the former State so as to discriminate it from goods of similar kind manufactured or produced therein.

T. S. Krishnamurthi Ayyar, for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. — *Petition dismissed.*

Rajamannar, C.J. and Basheer Ahmed Sayeed, J. Kanniah *v.* Radhakrishnamma
18th December, 1959. W.A. Nos. 138 to 142 of 1959

Letters Patent (Madras), clause 15—*Appeal against an order refusing or allowing a writ—Order stating that the inferior tribunal might dispose of the matter afresh—If final order—If appealable.*

It is now well settled that an appeal lies to a Bench of the High Court under clause 15 of the Letters Patent, Madras, against an order of a single Judge of the High Court issuing or refusing to issue a writ of *certiorari*, etc. The mere fact that the order states that the inferior tribunal is free to dispose of the matter afresh according to law does not make the order any the less final so as to bar an appeal. Such an order in proceedings under Article 226 of the Constitution cannot be equated to an order of remand, which is not appealable under clause 15 of the Letters Patent.

S. Mohan Kumaramangalam and *A. R. Ramanathan*, for Appellant.

V. Ratnam, The Additional Government Pleader (*M. M. Ismail*), *R. M. Seshadri*, *N. G. Krishna Ayyangar* and *T. Chengalvarayan*, for Respondents.

R.M. — *Appeal allowed.*

[SUPREME COURT.]

S. K. Das, J. L. Kapur and M. Hidayatullah, JJ. *17th February,* 1960.

C.I.T. Bombay, *v.* Chandulal Keshavlal & Co. C.A. No. 167 of 1958.

Income-tax Act (*XI of* 1922), *section* 10—*Deductible allowance*—*Question of fact*—*Appellate Tribunal*—*Jurisdiction of*—*Interference.*

It was a question of fact in each case whether any amount which was claimed as a deductible allowance had been spent wholly and exclusively for the purpose of the business of the assessee. The decision of such a question of fact was for the Income-tax Appellate Tribunal and since the Tribunal had arrived at such a conclusion, the finding could not be disturbed.

C. K. Daphtary, Solicitor-General of India, for Appellant.

N. A. Palkiwala, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S.J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ. *24th February,* 1960.

State of Madhya Pradesh *v.* Moradhwaj Singh. C.A. Nos. 40-110 of 1955.

Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, *sections* 22, 37 *and clause* 4 *of the Schedule to the Act*—*Article* 14 *of the Constitution of India* (1950)—*Section* 9 *of the Civil Procedure Code* (*V of* 1908).

" It was not possible to infer that the Vindhya Predesh Abolition of Jagirs and Land Reforms Act, 1952, was a colourable piece of legislation. Furthermore no discrimination could result from it."

Clause 4 of the Schedule to the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, which provides for the method of computing compensation, could not be declared, in the circumstances, as depriving the jagirdars of their proprietary interest. " It cannot be said that this clause provided for taking land from the jagirdars without paying any compensation."

It was not proper for the Judicial Commissioner to ascribe motives to the legislature, such as by saying that "the provisions were made to create inconvenience to a class whom the legislature did not like."

The Supreme Court held that sections 22 and 37 of the Act and clause (4) of the Schedule to the Act were valid and constitutional.

C. K. Daphtary, Solicitor-General of India, for Appellants in C. As. Nos. 40 to 109 of 1955 and for Respondent State in C.A. No. 110 of 1955.

K. B. Asthana, S. N. Andley and *J. B. Dadachanji,* for Respondents and for Appellant in C.A. No. 100.

G.R. ——— *Appeals* 40 *to* 109 *allowed and Appeal No.* 110 *dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. N. Wanchoo and J. C. Shah, JJ. *7th March,* 1960.

Parbani Transport Co-operative Society Ltd. *v.* R. T. A., Aurangabad. Writ Petition No. 110 of 1959.

Motor Vehicles Act (*IV of* 1939), *Chapter IV*—*Right of State Government to obtain permit*—*Section* 47 (1)—*Article* 14 *of the Constitution of India* (1950).

The State of Bombay was competent and entitled to apply for permits under Chapter IV of the Motor Vehicles Act of 1939 and there was " nothing in our law to prevent the Government from entering into a business in competition with private citizens ".

As regards the Proviso in section 47 (1) of the Motor Vehicles Act under which, other things being equal, a Co-operative Society is entitled to preference over individual owners in the matter of grant of a permit, it was held that the Proviso was not concerned with stating " who can apply for permits."

It was held that the Regional Transport Authority while disposing of applications for permits was acting as a quasi-judicial body and if it had made a mistake in its decision, the proper remedy for the petitioners was to appeal to the higher body. They could not in this regard rcomplain of a breach of Article 14.

B. L. R. Aiyangar, for Petitioner.

M. C. Setalvad, Attorney-General of India, for Respondents.

G.R. *Petition dismissed.*

[Supreme Court.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
8th March, 1960.

U. P. Electricity Supply Co., Ltd. *v.* Its Workmen.
C.A. No. 481 of 1958.

Industrial Disputes Act (XIV of 1947)—*Tribunal's jurisdiction to go beyond terms of reference.*

The Tribunal had gone beyond its terms of reference in deciding that the workmen were the employees of the Company rather than that of the contractors. There was no relationship of employer and employee between the company and these workmen. Under the terms of reference of dispute the Tribunal had no jurisdiction to decide the present question for such a question was not referred to it.

M. C. Setalvad, Attorney-General of India, for Appellant.

A. D. Mathur, for Respondent.

G.R. *Appeal allowed.*

[Supreme Court.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
9th March, 1960.

Vishnu Sugar Mills *v.* Its Workmen.
C.A. No. 402 of 1958.

Industrial Disputes Act (XIV of 1947)—" *Controlled industry* " *defined.*

No industry could be treated as a controlled industry for the purposes of the Industrial Disputes Act only because it was included in the schedule attached to the Development Act. It was held that in order that the Central Government may be an appropriate Government the industry concerned must have been specified as such by the Central Government. In this case there was no such notification.

Sukumar Ghosh, for Appellant.

M. K. Ramamurthi, for Respondent.

S. P. Verma, for Interverner.

G.R. *Appeal allowed.*

[Supreme Court.]

P. B. Gajendragadkar, K. Subba Rao and K. C. Das Gupta, JJ.
9th March, 1960.

Messrs. Pierce Leslie and Co., Ltd. *v.* Their Workmen.
C.A. Nos. 209 & 198-200 of 1958.

Industrial Disputes Act (XIV of 1957)—*Bonus.*

In view of the nature of business handled by the appellants in various fields it was not necessary to allow a higher return. It was held that 6 per cent. return on the capital is allowed only, 'when the risk involved in the business is higher'. Less than 6 per cent. is allowed when there is no unusual risk.

The tribunal had committed certain errors in its approach to the issues involved in the proceedings. Taking into consideration these errors the Court allowed only three months' basic wages as bonus in addition to the bonus already declared. The Court reduced the employees' bonus to basic wages for six months as against the basic wages for eight months as awarded by the industrial tribunal.

Messrs. C. B. Pai and *Sardar Bahadur*, for Appellants.

A. V. V. Shastri, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.
10th March, 1960.

Rashtriya Mill Mazdoor Sangh *v.* Apollo Mills.
C.A. No. 419 of 1956.

Bombay Electricity (Special Powers) Act (XX of 1946), *sections* 6-*A* (1), (11)—*Bombay Industrial Relations Act, section* 40 *read with Standing Orders Nos.* 16 *and* 17.

Section 11 of the Bombay Electricity (Special Powers) Act, 1946, did not bar a reference to the Industrial Court. The Court was of the opinion that the Appellate Tribunal had jurisdiction to interfere with the orders of the lower Court because " in the present case a substantial question of law was involved."

Dealing with the Standing Orders Nos. 16 and 17, read with section 40 of the Bombay Industrial Relations Act, it was held that the question raised in the present matter was quite different and was not covered by the Standing Orders.

The Court rejected the respondents' contention that the Industrial Court had not " rightly applied the principle of social justice."

N. C. Chatterjee, for Appellants.

R. J. Kolah, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
10th March, 1960.

Delhi Cloth and General Mill Co., Ltd. *v.* Kushal Bhan.
C.A. No. 88 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 33 (2)—*Scope.*

In the event of the criminal charges being of a grave nature, it would be advisable for the employer to await the decision of the criminal Court, "so that the defence of the employee in the criminal case may not be prejudiced."

The present case, however, was held to be of a simple nature in which it was not necessary to wait. It was held that the procedure adopted by the appellants did not violate the principles of natural justice. " We are of the opinion that this was a case in which the tribunal patently erred in not granting the approval under section 33 (2) of the Industrial Disputes Act."

M. C. Setalvad, Attorney-General of India, for Appellant.

Janardhan Sharma, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

K. C. Das Gupta and J. C. Shah, JJ.
11th March, 1960.

Pramatha Nath Mukherjee *v.*
The State of W. B.
Cr. A. No. 116 of 1958.

Criminal Procedure Code (*V of* 1898), *Chapters* 20 *and* 21 *and Penal Code* (*XLV of* 1860), *sections* 332 *and* 323—*Scope.*

The order of discharge under section 251-A (2)of the Criminal Procedure Code would primarily relate to the offences triable under Chapter 21 of the Code. But such an order did not affect in any way the position about the charges of offences triable under Chapter 20, Criminal Procedure Code. It was held that when taking cognizance of an offence under section 190 (1) (*b*), Criminal Procedure Code, the magistrate could also take cognizance of a minor offence. Consequently even after the order of discharge was made in respect of the offence under section 332, Penal Code, the minor offence under section 323, Penal Code, remained for trial.

K. R. Chaudhary and *K. R. Sharma,* for Appellant.

B. Sen and *P. K. Bose,* for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, M. Hidayatullah, K. C. Das Gupta and J. C. Shah, JJ.
14th March, 1960.

The Union of India, *In re.*
Special Reference No. 1 of 1959.

Constitution of India (1950), *Articles* 3, 143 (1) *and* 368—*Scope.*

Even if Article 3 (C) of the Constitution was given the widest interpretation. it would be difficult to accept the argument that it covered a case of cession of a part of national territory in favour of a foreign State. This Article, related to a case in which the area of a State was diminished by taking away a part of it, but at the same time, adding it to some other State and increasing its area. The part of area taken away from a State could also be dealt with in any other manner according to the provisions of the Constitution. In fact it continued to remain a part of Indian territory and did not cede from it to a foreign State. " We have no hesitation in holding that the power to cede national territory cannot be read in Article 3 (C) by implication.

Parliament, acting under Article 368 of the Constitution, could make a law to give effect to and implement the agreement in question covering the cession of a part of Berubari Union (No. 12) as well as some of the Cooch-Behar enclaves, which by exchange were to be given to Pakistan. " If such a law is passed, then Parliament may be competent to make a law under the amended Article 3 to implement the agreement in question. On the other hand, if the necessary law is passed under Article 368 itself, that alone would be sufficient to implement the agreement."

M. C. Setalvad, for Party No. 1, Union of India.

S. M. Bose, Advocate-General, West Bengal, for Party No. 2, State of West Bengal.

N. C. Chatterjee, U. M. Trivedi, D. R. Prem, Veda Vyas, A. P. Chatterjee, Janardhan Sharma, T. Rajan and *Ganpat Rai,* for parties Nos. 4 to 6, 9 to 13 and 17.

C. B. Aggarwala and *A. G. Ratnaparkhi,* for parties Nos. 14 to 16.

Not represented : Parties Nos. 3, 7 and 8.

G.R. *The Court answered the Reference on the above-mentioned lines.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
15th March, 1960.

Godavari Sugar Mills Ltd. *v.*
D. K. Worlikar.
C.A. No. 425 of 1958.

Bombay Industrial Relations Act, sections 2 (4), 42 (4) *and* 78 (1)—*Meaning of "not the sugar industry as such but the manufacture of sugar and its by products."*

The notification had deliberately adopted a different phraseology and had brought within the purview of the Act, "not the sugar industry as such but the manufacture of sugar and its by-products." It was difficult to see how the respondent, " who is an employee in the head office at Bombay can claim the benefit of this notification....The fact that the machinery required at the factories is received at the head office and has to be forwarded to the respective factories cannot in our opinion, assist the respondent in contending that the head office itself and all the employees engaged in it fall within the note to the notification."

M. C. Setalvad, Attorney-General of India, for Appellant.

M. S. K. Shastri, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. C. Das Gupta and J. C. Shah, JJ.
16th March, 1960.

Sarwarlal *v.* State of Andhra Pradesh.
C.A. Nos. 392/56 & 686/57.

Hyderabad Abolition of Jagirs Regulation dated 10*th August,* 1949—*If colourable and fraudulent exercise of legislative power.*

The Hyderabad Abolition of Jagirs Regulation (1949) did not amount to colourable and fraudulent exercise of legislative powers, the reason being that in spite of the firman vesting the military authorities with administrative powers, " it was open to the Nizam to issue orders or regulations contrary to those which were issued by the military Government and also to withdraw his authority. The powers of the Nizam were not restricted by any constitutional provisions and the delegation of authority, which was otherwise unrestricted, could not be declared invalid on the ground that " the enactment is in colourable exercise of the authority ".

It was further held that on January 26, 1950, when the Constitution was enforced, the appellants had no rights in the jagirs and could not therefore, "claim a writ for the restoration of the possession of land on to them".

S. P. Verma, S. Mohd. and S. R. Borgookar, for Appellants in both the Appeals.

A. V. V. Shastri, T. V. R. Tatacharya and T. M. Sen, for Respondents in both the Appeals.

G.R. ——— *Both the appeals dismissed.*

[SUPREME COURT.]

S. J. Imam, K. N. Wanchoo and J. C. Shah, JJ.
16th March, 1960.

Jai Krishnadas Manohardas Desai *v.* The State of Bombay.
Cr.A. No. 159 of 1957.

Penal Code (*XLV of* 1860), *section* 409 *read with section* 34—*Scope.*

The conviction under section 409, Penal Code, could be recorded even when the explanation given by the accused about the disappearance of property was untrue. The contention about the matter being of civil nature was also negatived in view of the fact that the explanations offered were false. It was further held that there was sufficient evidence about both the appellants having the common intention of misappropriating the cloth. Conviction was, therefore, maintained.

Proshotam Trikumdas, for Appellant No. 1.

Nemo, for Appellant No. 2.

H. J. Umrigar, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar and K. N. Wanchoo, JJ.
17th March, 1960.

Bharatkhand Textile Mfg. Co. Ltd. *v.* Textile Labour Association, Bhadra.
C.A. No. 1 of 1959.

Industrial Disputes Act (XIV of 1947)—*Gratuity for workmen—Employees' Provident Funds Act*, 1952.

The statutory provision for provident fund under the Employees' Provident Funds Act was not a bar to the present claim for a gratuity scheme. Out of 65 mills, 45 had accepted the award. "There was no justification why an important textile centre like Ahmedabad should not have a gratuity scheme, when the needs of the labour require it and the industry can afford it." We are satisfied "that the scheme framed by the Industrial Court does not suffer from any infirmities as alleged by the appellants."

M. C. Setalvad, Attorney-General of India, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. ——— *Appeal dismissed.*

Rajamannar, C.J., and Ganapatia Pillai, J.
1st September, 1959.

Gopala Menon *v.* Srinivasa Varadachariar.
O.S.A. No. 104 of 1955.

Usurious Loans Act (X of 1918) *and Usurious Loans (Madras Amendment) Act (VIII of* 1937), *section* 3—*Scope of.*

To decide whether the interest provided in any loan transaction is excessive the Court is governed entirely by the considerations expressly mentioned in section 3 (2) (*a*) to (*c*) of the Usurious Loans Act, 1918 as amended by Madras Amendment Act, 1937. It is not open to the Court to hold that interest is excessive on considerations which are unrelated to the circumstances mentioned in the said provisions. Nor is it possible to lay down an absolute maximum rate of interest beyond which interest would be excessive within the meaning of the Usurious Loans Act. In deciding whether the interest charged is excessive, several factors have to be taken into consideration and it will be in direct contravention of section 3 (2) (*a*) to (*c*) of the Act to ignore such factors and to lay down a general rule that any interest above a specific rate will be excessive. Nor could it be said as a rule that compound interest is *per se* usurious.

But when once the Court finds that having regard to all the circumstances mentioned in the section the interest is excessive, the Court must presume that the transaction was substantially unfair, though such presumption could be rebutted.

T. C. Raghavan, for Appellant.

C. Srinivasachari, T. V. Balakrishnan, C. R. Rajagopalachariar, S. Amudachari, V. S. Rangachari, N. Panchapakesa Ayyar and *R. Sundaralingam*, for Respondents.

R.M. ——— *Orders accordingly.*

Rajagopala Ayyangar, J.
9th December, 1959.

Tea Estate India (Private) Ltd. *v.* Labour Court, Coimbatore.
W.P. No. 552 of 1959.

Industrial Disputes—Violation of Standing Orders in terminating the service of an employee—If entitles the worker to get reinstated—Jurisdiction of an industrial tribunal—Scope of.

Reinstatement is no doubt a relief which is within the jurisdiction of an industrial tribunal to order and it is within the discretion of that tribunal to award such a relief. But when the exercise of that discretion is so unreasonable as to be termed perverse it could be interfered with by the Court under Article 226 of the Constitution.

In deciding whether reinstatement should be ordered in a case where there has been a breach of the terms of contract of employment, as embodied in the Standing

Orders, the degree of culpability of the employer should be taken into consideration. Where under the Standing Orders an employer was entitled to terminate the services of a probationer after giving the specified notice, the mere fact that the termination of the service has been a day earlier than the required notice period does not by itself entitle a worker to the relief of reinstatement.

Messrs. King and Partridge, for Petitioner.

R. Ramasubba Ayyar, A. D. Sitaraman and *B. R. Dolia,* for Respondents.

R.M. ——— *Rule absolute.*

Rajamannar, C.J., and Basheer Ahmed Sayeed, J. Addl. Dt. Panchayat Officer *v.* Venkatarama Iyer.
18th December, 1959. W.A. No. 77 of 1959.

Madras Village Panchayats Act (X of 1950), *sections* 4 (3), 10 (2), 20, 21 *and* 25 (3) *—Rules relating to election of President of Panchayat—Rule* 2 (2) (1) (*a*) *and* (3) (*a*)*—Scope and effect—Temporary President—Powers of.*

Words and Phrases—Vacancy.

A Panchayat constituted under the Madras Village Panchayats Act, 1950, is a body corporate having perpetual succession under section 4 (3) of the Act and hence the body corporate will continue notwithstanding casual vacancies. When the term of office of one set of members expires by efflux of time, the Panchayat as such is not dissolved but only new members come in as a result of new elections. Section 10(2) which provides for anticipatory elections is intended to avoid administrative inconvenience. Even section 20 which provides that there shall be a president and vice-president for every panchayat implies that a panchayat first exists. Hence there is no warrant for holding that without a president or vice-president there can be no panchayat having legal existence.

Read in this content of the provisions of the Act, rule 2 (2) and (3) of the Rules relating to election of president of a panchayat would apply to all vacancies in the office of the president whether they are casual or whether they are ordinary arising by efflux of time.

A temporary president appointed under the Act could preside over the meeting under section 25 (3) of the Act, which is a comprehensive provision to deal with every class of contingency in which neither the president nor the vice-president is available, whether due to incapacity or due to vacancy.

(1957) 2. A.W.R. 187, distinguished.

Vacancy means the state of being not filled or occupied which may arise by death, efflux of time, resignation or removal and an office newly created is *ipso facto* vacant at creation.

The Advocate-General (*V. K. Tiruvenkatachari*) and the Additional Government Pleader (*M. M. Ismail*), for Appellant.

S. Mohan Kumaramangalam, K. Hariharan, K. Veeraswamy and *T. R. Mani,* for Respondents.

R.M. ——— *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ. William Jacks & Co., Ltd. *v.* State of Madras.
22nd December, 1959. T.R.C. No. 124 of 1957.

Madras General Sales-tax Act (IX of 1939), *section* 3 (2) (*viii*)*—Electrical goods—Lathes—If electrical goods—Test.*

While it is neither possible nor desirable to catalogue an exhaustive list of what would constitute ' electrical goods ' within the meaning of section 3 (2) (viii) of the Madras General Sales-tax Act, 1939, it is rather difficult to hold that a lathe by itself, even though driven by electrical energy, will come within the scope of the expression ' electrical goods ' to warrant the additional tax under the Act.

M/s. King and Patridge for Petitioners.

The Government Pleader (*K. Veeraswami*) for Respondent.

R.M. ——— *Petition allowed.*

Rajamannar, C.J. Parthasarathi *v.* Swaminathan.
23rd December, 1959. C.R.P. No. 443 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956), *section* 14 (1)—*Benefits under—Joint family owning land above the statutory limit—If each member of the family disentitled to the benefit of the section.*

Where a family consisting of a number of coparceners owns land, the extent of which is above the statutory limit, it does not mean that each coparcener can be held to own the entire extent so as to disentitle him from the benefit of section 14 (1) of the Madras Cultivating Tenants (Fixation of Fair Rent) Act, 1956.

K. S. Desikan and *K. Raman,* for Petitioner.

Respondent not represented.

R.M. ——— *Petition allowed.*

Rajagopalan and Ramachandra Iyer, JJ. Muniammal *v.* Income-tax Officer, Salem.
6th January, 1960. W.P. No. 753 of 1958.

Income-tax Act (XI of 1922), *section* 54—*Scope of—Certified copies of Income-tax returns required by contesting heirs of a deceased assessee—When could be granted.*

Subject to the exception recognised in section 54 (3) of the Income-tax Act, the prohibition against disclosure of the statements made by an assessee is absolute and is intended for the benefit of the assessee. The assessee may, if he so chooses, waive the privilege conferred and there is nothing prohibiting an assessee from producing his return in any Court. An assessee is entitled to inspect and obtain copies of his own returns and persons on whose behalf returns are submitted, as in case of partnerships or Hindu undivided family, would also be entitled to inspect and obtain copies of such returns.

But this rule will not apply to the case of legal representatives of a deceased assessee. Where an assessee dies leaving more than one legal representative, the estate of the deceased will be represented by all of them and as such all of them should concur in applying for inspection or certified copies of the statements made by the assessee to the Income-tax Officer. No such inspection or copy could be given at the instance of one of them alone. Nor could it be said that there is any vested right in any legal representative to inspect the document as the right of inspection is only a privilege conferred on the assessee personally and it is not a transferable or heritable right.

K. Srinivasan, R. Narayanan and *A. Devanathan,* for Petitioner.

C. S. Rama Rao Sahib, John & Row and *S. K. Damodaram,* for Respondents.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J. Karuppannan *v.*
12th January, 1960. Cauvery Sugars and Chemicals Ltd.
S.R. Nos. 33341 to 33383 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent Act) (XXIV of 1956), *section* 11 *and rule* 11—*Revision to High Court from an order of the rent tribunal—Limitation for—How computed.*

The date from which the time for filing a revision petition to the High Court, from an order of the rent tribunal under section 11 of the Madras Cultivating Tenants (Payment of Fair Rent Act, 1956, should be computed would be the date of communication of the order to the concerned party and not the date of the order itself. Under rule 11 of the Rules framed under the Act every order of the tribunal should be served on the parties or the legal practitioner appearing for them. Hence no question of any time taken for applying for copies of orders arises in such cases.

V. P. Raman for Petitioners.

R.M. ——— *Answer accordingly.*

Ganapatia Pillai, J. Rukmini Ammal *v.* Krishnamoorthy Ayyar.
12th January, 1960. S.A. No. 1623 of 1959.

Hindu Succession Act (*XXX of* 1956)—*Applicability of*.

The Hindu Succession Act, 1956, gives a new right to a daughter to claim a share in her father's property and that right can operate only from the date when the Act came into force. Where property belonging to the father was sold in execution of a decree against him prior to the coming into force of the Act the mere fact that a suit questioning the sale was pending and was finally disposed of only after the coming into force of the Act could not give the daughter any right to share in such property. As the right of the daughter to claim a share in the property came into existence only after the sale has taken place she is not competent to question the sale either.

R. Sundaralingam and *S. Shanmugham,* for Appellant.

R.M. ——— *Appeal dismissed.*

Jagadisan, J. Sankaralinga Konar *v.* Venkatachala Konar.
28th January, 1960. C.R.P. No. 542 of 1959.

Madras Indebted Agriculturists (*Repayment of Debts*) *Act* (*I of* 1955), *sections* 4 *and* 7—*Effect on decrees.*

By reason of section 4 of the Madras Indebted Agriculturists (Repayment of Debts) Act, 1955 a decree amount due by an agriculturist is payable only in instalments and by force of that statute the decree becomes an instalment decree and limitation has to be computed accordingly. An instalment decree does not necessarily mean only a decree which *ex facie* makes a provision for its payment in instalments.

S. V. Rama Ayyangar, for Petitioner.

K. V. Rajagopalan, for Respondent.

R.M. ——— *Petition allowed.*

Rajagopalan, J. Appaji *v.* Municipal Council, Ootacamund.
28th January, 1960. W.P. No. 1041 of 1959.

Madras District Muncipalities Act (*V of* 1920), *section* 203—*Application for license to construct a building—Refusal on the ground that the land is likely to be required by the Municipality—If valid.*

The jurisdiction of the licensing authority under the Madras District Municipalities Act to refuse a license for construction of a building is strictly controlled by section 203 of the Madras District Municipalities Act which specifically enacts the grounds on which alone a license could be refused. The fact that the land in question is likely to be required by the Municipality and that there is a proposal to acquire the land is not a ground on which the licence asked for can be refused.

S. K. Ahmed Meeran and *M. Khaja Mohideen,* for Petitioner.

V. Tyagarajan and *V. Veeraraghavan,* for Respondent.

R.M. ——— *Petition allowed.*

Ramaswami, J. Subbiah Pillai, *In re.*
10th February, 1960. Crl. Rev. C. No. 750 of 1959.
(Crl. Rev. P. No. 731 of 1959.)

Prevention of Food Adulteration Act (*XXXVII of* 1954) *sections* 7 *and* 16—*Liability of servant—When arises.*

The penal provision of section 7 of the Prevention of Food Adulteration Act, 1954, cannot apply to a servant who sells adulterated food on behalf of his master unless he sells the same for his own benefit. Such a servant could, however, be held liable for abetment of the offence on proof of guilty knowledge express or implied.

C. K. Venkatanarasimhan and *K. S. Padmanabhan,* for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

R.M. ——— *Conviction set aside.*

Rajagopalan, J.
12th February, 1960.

Devey & Sons *v.* Additional Commissioner for Workmen's Compensation, Madras.
W.P. No. 1042 of 1959.

Madras Shops and Establishments Act (*XXXVI of* 1947), *section* 41 (2)—*Jurisdiction of appellate authority under.*

The jurisdiction of the appellate authority under section 41 (2) of the Madras Shops and Establishments Act is not limited or confined by the express allegations contained in the written application presented to him and merely because the application stated that the employee was dismissed without reasonable cause the appellate authority is not barred from investigating whether the dismissal on the charges of misconduct was justified or not. The appellate authority is entitled to take further evidence himself and is not confined to the evidence recorded by the management at the inquiry held by them. It is open to the authority to review that evidence and come to his own conclusion even at variance with the conclusion arrived at by the management, though the findings recorded by the management cannot be lightly brushed aside.

M. R. Narayanaswami and *N. Kannan,* for Petitioner.

B. Lakshminarayana Reddy, for Respondent.

R.M. ——— *Petition dismissed.*

Basheer Ahmed Sayeed and Subrahmanyam, JJ.
17th February, 1960.

Thiruvengadam *v.* Chelliah.
W.A. No. 159 of 1959.

Motor Vehicles Act (*IV of* 1939), *section* 64 (2)—*Revisory jurisdiction of State Transport Apellate Tribunal under—Scope and extent of.*

Where the State Transport Appellate Tribunal is satisfied that the orders of the subordinate authorities are not proper, the tribunal has the power under section 64(2) of the Motor Vehicles Act to pass such orders in relation to the subject-matter as it thinks fit. This includes a power to examine the records as if the tribunal were the authority granting or refusing the permit in the first instance and to pass orders on a consideration of the relative merits of the claimants to the permit.

Per *Basheer Ahmed Sayeed, J.*—In deciding the scope of the revisory powers of Administrative Tribunals exercising quasi-judicial functions, like the State Transport Appellate Tribunal, it has to be kept in view that their main function in disposing of matters that came up before them is to determine what is in the best interests of the public. The connotation of the term 'proprietary' in section 64 (2) of the Motor Vehicles Act has to be understood in this context. It will not be proper to equate the powers of the tribunal under the section to the revisory jurisdiction of the civil Court, under section 115, Civil Procedure Code and restrict the power to consider only question of law.

T. Venkatadri and *A. Ramanathan,* for Appellant.

N. K. Ramaswami and the Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and
Basheer Ahmed Sayeed, J.
18th February, 1960.

Standard Vacuum Oil Co. *v.* Additional Commissioner for Workmen's Compensation, Madras.
W.A. Nos. 139 and 140 of 1959.

Madras Shops and Establishments Act (*XXXVI of* 1947), *section* 4 (1) (*a*) *and* 41 (2)—*Person employed in position of management—Test.*

Contitution of India (1950), *Article* 226—*Jurisdiction under.*

Where there is a manifest error of law which goes to the root of the jurisdiction of the tribunal, *viz.*, whether a particular employee would fall within the category of persons protected by any Statute, which is not a mere question of fact, but a question of law to be decided on proved facts, it is open to the Court to go into fact and decide the question and issue a writ of *certiorari* to quash the order of a tribuna if on the facts the tribunal has committed a patent error of law.

To decide whether a person employed is employed in the position of management within the meaning of section 4 (1) (*a*) of the Madras Shops and Establishments Act, 1947, the distinctions between 'managerial capacity' and 'position of management' should be borne in mind. The amount of pay or salary drawn may not be an absolute test. The mere fact that the employee concerned was subject to the overall supervision of a superior officer would not by itself make the employee any the less a person employed in a position of management, if in fact he is one such having regard to the nature and scope of his duties.

The Advocate-General (*V. K. Trivunkatachari*), *S. Govind Swaminathan* and *S. S. Sivaprakasa*, for Appellant.

The Additional-Government Pleader (*M. M. Ismail*) and *K. K. Venugopal*, for Respondents.

R.M. *Appeals allowed.*

Ganapatia Pillai, J.
19th February, 1960.

Krishna Chetty *v.* Collector of Customs, Madras.
C.M.P. No. 450 of 1960.
in W.P. No. 461 of 1959.

Sea Customs Act (*VIII of* 1878), *section* 167 (8) *and* (81)—*Relative scope of offences under.*

On a comparison of the provisions of section 167 (8) and 167 (81) of the Sea Customs Act it is clear that the offences sought to be punished under the two sub-sections are not the same. The offence under section 167 (8) relates to importation or exportation of the prohibited goods and does not concern itself about the subsequent acts which are dealt with under section 167 (81) of the Act, the acts chargeable under which are all acts taking place after the importation is over. Hence a prosecution for an offence under section 167 (81) of the Act cannot be stayed merely because a Writ Petition is pending to quash an order under section 167 (8) of the Act.

V. V. Raghavan, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Somasundaram, J.
3rd March, 1960.

Nanja, *In re.*
Crl. Rev. C. Nos. 657 and 658 of 1959.
Crl. Rev. Pet. Nos. 638 and 639 of 1959.

Madras Public Health Act (*III of* 1939), *section* 39—*Notice under*—*Requisites of.*

A notice under section 39 of the Madras Public Health Act requiring the owner of a building to provide sanitary convenience should specify the position where the latrine should be put up in the building or compound. A notice without specifying such position is not a legal one and failure to comply with such a notice will not amount to any offence.

T. M. Kasturi, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for Respondent.

R.M. *Accused acquitted.*

Somasundaram, J.
8th March, 1960.

Natesa Pillai *v.* Jayammal.
Crl. Rev. C. No. 64 of 1960.
Crl. Rev. P. No. 64 of 1960.

Criminal Procedure Code (*V of* 1898), *section* 488—*Maintenance order under—Subsequent living together of husband and wife—Effect on the order of maintenance.*

Where subsequent to an order of maintenance made under section 488 of the Criminal Procedure Code the parties reunite and live as husband and wife it puts an end to the order. If the wife separated again from the husband then she has to file a fresh petition on a fresh cause of action and obtain an order on establishing that the requirements of the section are satisfied.

B. T. Sundararajan, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for State.

T. Ramalingam and *A. C. Muniswami Reddi*, for Respondents.

R.M. *Petition allowed.*

Ananthanarayanan, J.
9th March, 1960.

Sakthi *v.* Kuppammal.
A.A.O. No. 301 of 1959.

Guardians and Wards Act (*VIII of* 1890), *sections* 29 *and* 31—*Permission to sell minor's property —Consideration—Evident advantage to the ward—Sale of cultivable land belonging to minor in anticipation of land ceiling legislation—If permissible.*

In considering whether the permission sought for by a guardian for sale of the ward's property should be granted or not a broad view must be taken of the concept of what is a measure to the benefit of the estate of the minor. Though it is not possible to lay down any hard and fast rule as to the factors which a Court could take judicial notice of in deciding what a prudent man would do, still where it is clear that the policy of the Government was to impose a ceiling on land-holding and that legislation in that regard was imminent and surplus lands taken over may not be given adequate compensation on the basis of the present market value, it is certainly open to the guardian, as a prudent man would do in his affairs, to dispose of the surplus lands at the best possible rate. Such a move is not opposed to public policy and the Court will be justified in granting permission to sell such surplus lands as may be found necessary as it will be for the benefit of the minor.

R. Gopalaswami Ayyangar and *S. Ramalingam*, for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*) and *V. Ratnam*, for Respondent.

R.M. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.* North Brook Jute Mills Co. Ltd. *v.* Its Workmen.
23rd March, 1960. C.A. No. 141 of 1959.

Industrial disputes Act (XIV of 1947), *section* 33—*Lock-out period wages—Right to.*

The rationalization scheme was clearly an alteration of conditions of service to the prejudice of the workmen. The refusal by the workmen to do additional work could not amount to a strike, and even if it was considered a strike, it was certainly not illegal or unjustified.

The closure of the mills, it was held, amounted to an illegal lock-out, and the workmen, unable to work in consequence of it, were entitled to wages for the period of absence caused by such a lock-out.

C. K. Daphtary, Solicitor General of India, for Appellant.

P. K. Sanayal, P. K. Chakarwarti and *R. C. Dutt,* for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. C. Das Gupta and *J. C. Shah, JJ.* Chairman, Bankura Municipality *v.* Lalji Raja & Sons.
23rd March, 1960. Crl. A. No. 119 of 1957.

Bengal Municipal Act of 1952, *section* 431 (2)—*Scope—District Magistrate's jurisdiction to pass orders about disposal of goods seized by order of a Magistrate.*

The impugned order could be passed by the Magistrate only in regard to articles seized by the officers of the Municipal Committee of their own accord and not with the assistance of a judicial order from a Magistrate. Section 431 (2) of the Bengal Municipal Act did not vest the District Magistrate with any jurisdiction to pass orders about the disposal of the goods seized by order of a Magistrate.

C. B. Aggarwala, for Appellant.

B. Sen, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.* B. N. Ellias & Co., Ltd. Employees' Union *v.* B. N. Elias & Co., Ltd.
24th March, 1960. C.A. No. 121 of 1959.

Industrial Disputes Act (XIV of 1947)—*Customary bonus for puja festival.*

From the receipts given by the employees it was clear that the bonus was accepted by them as *ex gratia* bonus. They could not, therefore, claim that it had become an implied term of agreement or a condition of service. The bonus was not customary, as it was not connected with any festival. This puja bonus to the subordinate staff had become customary and traditional and must be given for the year 1956, for which no bonus whatsoever had been paid.

N. C. Chatterjee, for Appellant.

C. K. Daphtary, Solicitor General of India, for Respondent.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar and *K. C. Das Gupta, JJ.* Management of Kairabetta Estate *v.* Rajamanikkam.
24th March, 1960. C.A. No. 91 of 1959.

Industrial Disputes Act (XIV of 1947)—*Justification for lock-out—Lay-off compensation.*

In the circumstances of the present case, when the manager was violently attacked and other members of the staff were threatened by the workmen, the mana-

gement was justified in declaring the lock-out and the workmen could have no grievance against it. The lock-out in the present case, could not be considered a lay-off and as such, the workmen were not entitled to claim any lay-off compensation from the appellant.

C. B. Pai and *Sardar Bahadur*, for Appellant.

M. K. Ramamurthi and *Venkataraman*, for Respondents.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.* *24th March,* 1960.

Bharat Barrel and Drum Mfg. Co. (Private) Ltd. *v.* G. G. Waghmere. C.A. No. 93 of 1959.

Industrial Disputes Act (XIV of 1947)*—Increased wages and bonus equal to fiv months basic wages.*

The Court held that the Tribunal's award was reasonable and justified and there was no ground to interfere with it and upheld the award of the Tribunal granting increased wages and bonus for the year 1952 equal to five months basic wages to the workmen of the appellant company.

R. J. Kolahy, for Appellant.

K. R. Chaudhar, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.* *25th March,* 1960.

R. K. Kapur *v.* State of Punjab. Crl. A. No. 217 of 1959.

Criminal Procedure Code (V of 1898), *section* 561 (*a*)*—Scope.*

" We are anxious not to express any opinion on the merits of the case. All that we wish to say is that it is not a case where the appellant can justly contend that on the face of the record the charge levelled against him is unsustainable ".

" It is not surprising that this unusual delay has given rise to the apprehension that the object of the delay was to keep the sword hanging over his head as long as possible ". The judgment of the Punjab High Court was not erroneous and therefore could not be interfered with under Article 136 of the Constitution.

Appellant in person.

S. M. Sikri (Advocate-General, Punjab), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Ganejdragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.* *25th March,* 1960.

N. Kalindi *v.* Tata Locomotive Eng. Ltd. C.A. No. 101 of 1960.

Industrial Disputes Act (XIV of 1947)*—Right of workmen to be represented by a Union representative at enquiries held by the Management*

" A workman against whom an inquiry is being held by the management has no right to be represented at such inquiry by a representative of his Union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance."

N. C. Chatterjee, for Appellants.

Soharab, D. Vimadalal, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
4th April, 1960.

Chartered Bank *v.* The Employees' Union.
C.A. No. 14 of 1959.

Industrial Disputes Act (XIV of 1947)—*Reinstatement of a dismissed employee—Right to.*

" In the peculiar circumstances obtaining in the cash department, the use of the power by the bank under paragraph 522 (1) of the award was justified. Nor do we think that the failure of the bank to provide alternative employment to the respondent is improper".

Sachin Chaudhary, for Appellant.

A. S. R. Chari, for Respondents.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar and *K. C. Das Gupta, JJ.*
4th April, 1960.

Assam Oil Co. Ltd. *v.* Its Workmen.
C.A. No. 24 of 1959.

Industrial Disputes Act (XIV of 1947)—*Order of reinstatement—Compensation—Discharge without enquiry.*

The employer could normally have recourse to the terms of the contract for terminating an employee's services. But the exercise of the power must be *bona fide.* Where the order of discharge is in substance based on misconduct, fairplay and justice require that the employee should be given a chance to explain the allegations weighing on the mind of the employer. It was further observed that the employee was entitled to expect security of tenure. On the facts of the case, it was found that the termination of Miss Scott's services was due to misconduct and the appellant was not justified in discharging her without holding a proper enquiry.

The employer had completely lost confidence in Miss Scott and, therefore, it was not fair to order reinstatement. The appellants were ordered to pay Rs. 12,500 as compensation to Miss Scott.

H. N. Sanayal, Additional Solicitor-General of India, for Appellant.

Frank Anthony, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and *K. C. Das Gupta, JJ.*
4th April, 1960.

Management of Chandramalai Estate *v.* Its Workmen.
C.A. No. 347 of 1959.

Industrial Disputes Act (XIV of 1947)—*Wages for the strike period.*

The employees acted in great haste. They should have waited till after the termination of proceedings before the Conciliation officer. "In our view there is no escape from the conclusion that the strike was unjustified and so the workmen are not entitled to any wages for the strike period ".

S. Govind Swaminathan, for Appellants.

Jacob A. Chakarmal, for Respondent No. 1.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, J. L. Kapur, K. N. Wanchoo and *K. C. Das Guptia, JJ.*
7th April, 1960.

Sant Ram, *In re.*
C.M.P. No. 928 of 1959.

Supreme Court Rules, rules 23 *and* 24 *regarding Touts—Vires—Article* 14 *of the Constitution of India,* 1950.

As the highest Court in the land, the Supreme Court must make rules to enure sound administration of justice and the conduct of advocates and their assis-

tants must therefore "form the subject-matter of the regulations by the Rules of the Court."

The Rules must necessarily define a tout and prescribe procedure for holding enquiries " to determine whether or not a particular person should be included in such lists." Rules 23 and 24 which made provisions for this purpose, " must therefore be held to be constitutional and not *ultra vires*." These rules, it was held did not create any discrimination and were therefore not violative of Article 14 of the Constitution.

" A tout as such cannot claim any rights in relation to the business of the Court and it is incumbent on every Court where legal practitioners are allowed to appear and plead to see that toutism is completely eliminated."

M. G. Bhimasena Rao, for Petitioner.

H. N. Sanayal, Additional Solicitor-General of India for the Attorney-General of India.

G.R. ———— *Petition dismissed.*

[Supreme Court.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
7th April, 1960.

M. P. Mineral Industry Association *v.* Regional Labour Commissioner.
C.A. No. 389 of 1959.

Minimum Wages Act (XI of 1948) *section* 5 (2)—*Madhya Pradesh Government Notification of March* 30*th*, 1952—Ultra vires.

A notification under section 5 (2) of the Minimum Wages Act could be issued only in respect of employment which fell under the Schedule to the Act. It was clear, that the stone-breaking or stone-crushing operations carried on in mines were not included in Item 8 of the Schedule. The impugned notification, issued under section 5 (2) of the Act was, therefore, *ultra vires*.

The entry in the Schedule, his Lordship added, related to "stone-breaking and stone-crushing quarries" and not to 'mines'.

A. S. Bobde and *Ganpat Rai*, for Appellant.

H. J. Umrigar, K. L. Hathi and *R. H. Debhar*, for Respondents.

G.R. ———— *Appeal allowed.*

[Supreme Court.]

P. B. Gajendragadkar, K. N. Wanchoo, and K. C. Das Gupta, JJ.
7th April, 1960.

Muir Mills Ltd. *v.* Its Workmen.
C.A. No. 305 of 1959.

Industrial Disputes Act (XIV of 1947,—*'Basic wages'—Meaning.*

The term ' basic ' means an amount which is allowable irrespective of special claims, and thus understood ' basic wage ' never includes the additional emoluments which some workmen may earn on the basis of a system of bonuses related to production. The Court held that production bonuses were not comtemplated in the order of Government . It also held accordingly that the Appellate Tribunal was right in saying that the Government order did not absolve the company of the duty of continuing to pay the production and incentive bonus to workmen as before.

J. S. Pathak and *S. P. Sinha* , for Appellant.

J. P. Goyal, for Respondent No. 2.

Maqbool Ahmed Khan, Secretary of the Union, for Respondent No. 1.

G.R. ———— *Appeal dismissed*

Rajamannar, C.J., and *Jagadisan, J.* Vasantha Pai *v.* Dr. A. Srinivasan.
8th January, 1960. W.A. No. 65 of 1957.

Representation of the People Act (*XLIII of* 1951), *section* 123 (7)—*Candidate authorising expenditure—What amounts to.*

In order to attract the provisions of section 123 (7) of the Representation of the People Act, 1950, that a candidate has incurred or authorised the incurring of any expenditure in contravention of the Act or Rules it should be established that the authorised expenditure was eventually met by the candidate himself. The mere fact that other persons interested in the candidate expended money themselves to help the candidate in his election would not render the candidate guilty of the corrupt practice set out in section 123 (7) of the Act.

G. Vasanta Pai, for Appellant.

The Advocate-General (*V. K. Thiruvenkatachari*), *V.P. Raman* and the Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Appeal dismissed.*

Rajamannar, C.J., and *Jagadisan, J.* Abdul Gani *v.* Periaswami Chetty & Co.
18th January, 1960. O.S.A. No. 28 of 1956.

Partnership Act (*IX of* 1932), *sections* 45 *and* 47—*Legal representative of a deceased partner—If bound by an acknowledgment made by the surviving partner subsequent to the dissolution of the partnership by death.*

Limitation Act (*IX of* 1908), *section* 21 (2)—*Scope of.*

The legal representatives of a deceased partner cannot be validly bound for payment of the partnership debts by an acknowledgment made by the surviving partner after the dissolution of the partnership by the death of the other partner. The theory of implied agency disappears on the dissolution of the partnership and the proviso to section 45 of the Partnership Act would apply in such cases and section 47, which relates to obligation *inter se* the partners so far as may be necessary for winding up the affairs of the partnership cannot be invoked to bind the legal representatives of the deceased partner merely on the basis of an acknowledgment made by the surviving partner after the date of dissolution.

Under section 21 (2) of the Limitation Act the theory of implied agency underlying the concept of a partnership is not by itself sufficient to enable a partner to bind the other partners by an acknowledgment of liability of the firm unless there is evidence, however slight, or other circumstances such as course of business or conduct of parties, as to make the non-acknowledging partner also liable.

R. Thirumalaiswami Naidu, for Appellant.

K. M. Bashyam Ayyangar, for Respondent.

R.M. ——— *Appeal allowed.*

Ramaswami and *Ananthanarayanan, JJ.* Nadar Bank, Ltd., Madurai *v.*
21st January, 1960. Canara Bank., Ltd.
A. No. 33 of 1956.

Contract—Pledge and hypothecation of moveables—Difference between—' Open cash credit ' and ' key loan ' system—Nature of

It is no doubt true that in order to constitute a valid pledge of moveables there should be delivery of the articles, either actual or constructive, to the pledgee. But the possession of the pledgee may be either physical or even a right to possession and the validity of the pledge is not affected merely because the pledgor remains in possession of the goods under the specific authority of the pledgee for certain limited purposes. The real test is whether the dominion over the goods pledged remains

with the pledgee and whether the handling of the goods by the pledgor is under the delegated authority of the pledgee or is independent of it.

The mercantile practice of ' open cash credit ' and ' key loan ' are only certain forms of pledge though they may differ in their flexibility, *inter se.* They are not cases of mere hypothecation of moveables.

The Advocate-General (*V. K. Thiruvenkatachari*), *V. V. Raghavan* and *V. Srinivasan*, for Appellants.

T. Krishna Rao, for 1st Respondent.

R.M. ——— *Appeal allowed.*

Jagadisan, J.
25th January, 1960.

Mohideen Kutty *v.* Shaik Mohd. Maracair.
C.R.P. No. 2144 of 1959.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949), *section* 7-*A and Rule* 9 (3)—*Order under—If* ex parte *order.*

An order made in terms behind the back of a tenant under section 7-A (4) of the Madras Buildings (Lease and Rent Control) Act, 1949, will also be an *ex parte* order which could be set aside under rule 9 (3) of the Rules framed under the Act. The proceedings before the Rent Controller even under section 7-A (4) of the Act are certainly of a judicial nature and at every stage, subject to the provisions of the Act, the parties have to be heard and orders passed.

P. Venkataswami and *A. Subramania Ayyar*, for Petitioner.

K. C. Jacob, S. K. L. Ratan and *J. Satyanarayanan*, for Respondents.

R.M. ——— *Petition allowed.*

Subrahmanyam, J.
29th January, 1960.

Rosammal *v.* Manavedan Raja.
A.A.A. O. Nos. 76 & 78 of 1958.

Madras Cultivating Tenants Protection Act (XXV of 1955), *section* 3 *and Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of* 1956), *section* 13—*Decree for mesne profits against a tenant who is a cultivating tenant within the meaning of the Acts—Decree for mesne profits passed prior to the Acts—If could be executed against the tenant for the period subsequent to the commencement of the Act.*

Civil Procedure Code (V of 1908), *Order* 20, *rule* 12—*Decree for mesne profits prior to Madras Act (XXV of* 1955)—*If could be executed in respect of period subsequent to the Act.*

Having regard to the scheme of the Madras Cultivating Tenants Protection Act, 1955, and the Madras Cultivating Tenants (Payment of Fair Rent) Act, 1956, a decree for mesne profits against a tenant, who comes within the protection afforded by the Acts, could not be executed against him for the period subsequent to the commencement of the Acts. Though the expression ' rent ' is not defined in the Acts the word must be understood in the sense known to law, namely anything payable under the contract of lease between the owner of the land and the cultivating tenant. Having regard to the right of possession conferred on a cultivating tenant and rent enforceable against him being only the fair rent payable under the Act, it cannot be said that the possession of the tenant is unlawful. The enactment of Madras Act (XXV of 1955) takes away the basis of a decree for mesne profits, *viz.*, that the possession of the defendant judgment-debtor is wrongful. As the basis or foundation of the decree is taken away that part of the decree relating to mesne profits ceases to exist and cannot be executed against a tenant after the commencement of the said Act, which confers on the tenant the right to continue in possession. The rent payable by the tenant will only be either at the contract rate or at the rate

of the fair rent, if determined under Act XXIV of 1956, and not on the basis of mesne profits provided for under any decree.

K. S. Champakesa Ayyangar and *K. C. Srinivasan*, for Appellant.

A. K. Srinivasan, for Respondent.

R.M. —— *Appeal allowed.*

Ramachandra Iyer, J. Special Thasildar, Land Acquisition, Neyveli
29th January, 1960. Project *v.* Muthu Reddi.
S.R. No. 26775 of 1959.

Land Acquisition Act (*I of* 1894), *sections* 18 *and* 54—*Order on reference under section* 18—*When appealable under section* 54.

Section 54 of the Land Acquisition Act provides that an appeal can be filed in any proceedings under the Act from an award or any part of such award. There is no definition in the Act of the term ' award '. But when once there is a proper reference before the Court under section 18 of the Act all orders passed in that reference would be awards and an appeal would lie. Where on a reference under section 18, the Court gives a decision, which has the effect of nullifying the award of the Land Acquisition Officer and a remittal of the proceedings for purposes of fixing the proper amount of compensation, that would be an award against which an appeal would lie to the High Court under section 54 of the Act.

A.I.R. 1931 Mad. 26 : I.L.R. 45 Mad. 320 (P.C.), referred.

(1944) 2 M.L.J. 130, doubted.

The Government Pleader (*K. Veeraswami*), for Petitioner.

R.M. —— *Answer accordingly.*

Ramaswami, J. Nallakaruppan Chettiar *v.* Subbiah Thevar.
11th February, 1960. Crl. Rev. C. No. 716 of 1959.
Crl. Rev. P. No. 697 of 1959.

Cattle Trespass Act (*I of* 1871), *section* 10—*Scope of*—' *Cultivator or occupier* '—*Meaning of.*

Section 10 of the Cattle Trespass Act contemplates certain sets of persons who alone are authorised to seize cattle trespassing under certain circumstances. One of them is the cultivator or occupier of the land on which the cattle trespasses. The term ' cultivator ' includes not only the person who actually toils on the land on his own account but also the owner of the land who gets it cultivated through his farm servant or hired labour. The workable test in the interpretation of the terms ' cutivator' or ' occupier ' appears to be whether or not the person who claims to have legally seized the cattle or caused them to be seized can maintain that he has suffered any loss or damage as the very scheme of the Act is based on the concept of damage caused by the trespassing cattle and consequent loss to cultivators.

16 Cr.L.J. 772 : A.I.R. 1922 Pat. 317 : 1948 M.W.N. 407, referred.

R. Santanam, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

M. S. Sethu, for Complainant.

R.M. —— *Sentence reduced.*

Rajamannar, C.J., and *Jagadisan, J.* Venkataraman *v.* Lakshmi Ammal.
16th February, 1960. O.S.A. No. 61 of 1958.

Civil Procedure Code (*V of* 1908), *section* 151—*Powers of Court under*—*Consent decree giving limited estate to a Hindu woman*—*Subsequent passing of the Hindu Succession Act*, (XXX of 1956)—*If consent decree could be modified granting absolute estate.*

Hindu Succession Act (*XXX of* 1956), *section* 14 (2)—*If consent decrees before the Actc could be varied by Court.*

It is no doubt true that section 14 (2) of the Hindu Succession Act, 1956, converts the limited estate of a Hindu woman into an absolute one. But that does

not have the effect of making consent decrees made before the Act void merely because such decrees provide only for a limited estate. It is not open to a Court to grant a declaration of a substantive nature under section 151 of the Civil Procedure Code. Section 151 could confer no power on a Court to vary a consent decree under which a limited estate was given before the coming into force of the Hindu Succession Act, 1956, into a decree granting her an absolute right.

C. S. Rajappa, for Appellant.

V. Sambandhan Chettiar, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan, J. Rangachari *v.* G. M., Southern Railway.
3rd March, 1960. W.P. No. 1051 of 1959.

Constitution of India (1950), *Article* 16—*Scope of—Reservation of promotion posts in favour of backward classes—Validity—Backward classes who are—'Employment'—Scope of.*

The equality of opportunity which Article 16 (1) of the Constitution of India guarantees and the discrimination which Article 16 (2) prohibits apply also to promotions of civil servants from one post to another when both are included in the same service. Though promotions may not be appointment to a service it is an appointment to an office within the meaning of Article 16 (1) and (2). The term 'employment' in Article 16 (1) and (2) covers the entire period of service of a civil servant and throughout his service a citizen is entitled to the rights guaranteed by clauses (1) and (2) of Article 16.

Taking the scheme of the Constitution as a whole the expression 'backward classes' in Article 16 (4) of the Constitution includes members of the scheduled castes and scheduled tribes. Article 16 (1) of the Constitution no doubt authorises the reservation of appointments and posts in favour of backward classes. But promotions from one post to another in the same service is neither appointment to a service nor appointment to a post. The ambit of Article 16 (4) is narrower than that of Article 16 (2). While Article 16 (2) applies to all civil posts and all appointments thereto, to Article 16 (4) is confined only to appointments to a service or post, which means the initial appointment to the service itself. It cannot cover a case of promotion from one post to another of a higher grade in the same service. While such promotions are within the scope of the ban against discrimination imposed by Article 16 (2) of the Constitution they are outside the protection under Article 16 (4).

Hence a reservation in favour of backward classes in respect of promotions from one post to another in the same service will be unconstitutional, as offending against Article 16 (2) of the Constitution and is not saved by Article 16 (4).

S. Mohan Kumaramangalam and *P. S. Madhusudanan*, for Petitioner.

K. Rajah Ayyar, C. Govindaraja Ayyangar and *B. T. Seshadri*, for Respondent.

R.M. ——— *Rule absolute.*

Ramachandra Iyer, J. Subbanna Gounder *v.* Ellappa Chettiar.
18th March, 1960. C.R.P. No. 283 of 1960.

Madras City Tenants' Protection Act (*III of* 1922) *and Madras Cultivating Tenants' Protection Act—Applicability—If could apply simultaneously in respect of the same subject matter.*

The Madras City Tenants' Protection Act applies to tenancies of land for purposes of putting up a building thereon whereas the Madras Cultivating Tenants' Protection Act applies only to tenancies of agricultural land. It is not possible for both these enactments to apply to the same subject-matter. If the tenancy is one purely for agricultural purposes the Madras City Tenants' Protection Act will not apply even though a building has been put up thereon to facilitate agricultural operations.

S. Mohan Kumaramangalam and *S. Paramaswami*, for Petitioner.

R. Gopalaswami Ayyangar and *Vedantam Srinivasan*, for Respondent.

R.M. ——— *Orders accordingly.*

Balakrishna Aiyar and Subrahmanyam, JJ. State of Madras *v.* R[illegible]gammal
24th December, 1959.

Appeal No. 476 of 1956.

Land Acquisition Act (*I of* 1894), *section* 18—*Reference under—Scope of—Jurisdiction of Civil Court.*

The Land Acquisition Act does not confer on the Court to which a reference is made under section 18 of the Act jurisdiction to investigate questions of fact which did not arise for investigation by the Collector on the statements filed before him. As such it is not open to a claimant in proceedings before the Court on a reference under section 18 to raise any ground of objection to the award by way of supplementary claims to compensation or otherwise other than the grounds stated in the application made to the Collector under that section.

A.I.R. 1930 Mad. 586, followed.

The Government Pleader (*K. Veeraswami*) and *R. G. Rajan*, for Appellant.

A. Balasubramanian, for Respondent.

R.M. *Appeal dismissed.*

Jagadisan, J. Kuppa Goundar *v.*
5th January, 1960. Joint Sub-Registrar III, Salem.
Writ Petition No. 1217 of 1959.

Registration Act (*XVI of* 1908), *section* 75 (4)—*Power of Sub-Registrar in summoning witnesses—Scope and extent of.*

The words 'as if he were a civil Court, in section 75 (4) of the Registration Act is very wide and would attract all the provisions of Order 16, rule 14 of the Civil Procedure Code, 1908, relating to summoning and enforcing attendance of witnesses. Hence a Sub-Registrar has jurisdiction to summon any witness, of his own accord, in an enquiry in respect of compulsory registration of document, if he feels that the evidence of the witness will be necessary for the decision of the dispute.

K. S. Ramamurthi and *O. K. Ramalingam*, for Petitioner.

R.M. *Petition dismissed.*

Rajamannar, C.J., and Basheer Ahmad Sayeed, J. Joseph Sam *v.* Caltex India Ltd.
7th January, 1960.

W.A. No. 90 of 1957.

Madras Shops and Establishments Act (*XXXVI of* 1947), *sections* 41 *and* 51—*Scope of.*

Section 51 of the Madras Shops and Establishments Act, 1947, does not have the effect of interfering with the functions and jurisdiction of the civil Courts and judicial or quasi-judicial Tribunals to decide whether in the particular circumstances of a case the Act was applicable or not. It is only a miscellaneous provision intended to decide certain questions as far as the department is concerned. Hence an Additional Commissioner for Workmen's Compensation has jurisdiction to decide in an appeal before him the question whether the Act was applicable to the person concerned or not, *viz.*, whether or not he was in the position of management.

M. K. Nambiar and *K. K. Venugopal*, for Appellant.

Messrs. King and *Partridge* and the Additional Government Pleader (*M.M. Ismail*), for Respondent.

R.M. *Appeal dismissed.*

Rajagopalan, J.
7th January, 1960.

Appaswami Naidu *v.* Board of Revenue.
W.P. No. 1253 of 1956.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), sections 31 and 35 and Madras Proprietary Estates Village Service Act (II of 1894)—'Ivu' and 'dittam' inams of Tirunelveli District—Computation of basic annual sum—Permissible deductions—Dittam payable by the holder of an inam estate for services—If amounts to jodi, quit rent, etc., liable to be deducted from the basic annual sum.

A 'dittam' payable to the Government by the holder of an inam estate does not by itself constitute 'jodi' 'quit rent' within the meaning of section 31 (*a*) of the Madras Estates Abolition Act nor is it a liability imposed at the time of the confirmation of the grant. As such amounts paid as dittam cannot be deducted from the computation of the basic annual sum under section 35 (*a*) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. The expression 'or other amount of like nature' in the sub-clause has to be construed *ejusdem generis* with the words 'jodi' or 'quit rent' in the section.

The 'ivu' and 'dittam' inams, a peculiar feature of Tirunelveli District, represent grants for the payment of the remuneration of the village officers, the karnam and the nattanmai. But the payment of such dittam is not a contractual obligation incurred by the landholder of the estate at any time subsequent to 1865. It is only under section 27 of the Madras Proprietary Estates Village Service Act, 1894, that the Government purported to enforce such payments. But that section could have no application to the levy of dittam in the instant case as the levy is not authorised by section 27 (1) or (2) of the said Act. As there is no lawful basis for the demand of the dittam, though factually it was being paid by the landholder, they do not come within the scope of the deductions permitted by section 35 (*a*) of the Madras Act (XXVI of 1948).

Obiter:—Section 27 of the Madras Act (II of 1894) could not apply to estates falling with the category defined by section 4 (*d*) of the Act as neither jodi nor quit rent can be equated to permanent assessment within the meaning of section 27 of the Act.

R. G Rajan, for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Rule absolute.*

Rajagopalan and Ramachandra Iyer, JJ.
19th January, 1960.

Coelho *v.* Agr. I.T.O., Gudiwada.
T.R.C. No. 53 of 1957.

Madras Agricultural Income-tax Act (V of 1955), section 5 (e) and (k)—Applicability—Permissible deduction—Interest paid on money borrowed for acquiring land—If permissible deduction.

The nature of the loan and the interest paid thereon contemplated under section 5 (*k*) of the Madras Agricultural Income-tax Act, 1955, is that the borrowed amount should have been actually spent on the land, *viz.*, for any agricultural or horticultural purposes or any purpose subservient thereto. An expenditure for the purpose of purchasing the land itself is not an expenditure 'on the land' within the scope of that sub-section. A loan borrowed for the purpose of purchasing the land, though of a capital nature, the interest paid on the said loan in the year of account is not of a capital nature. A payment of interest on a loan incurred for the acquisition of land, which is the source of taxable income under the Act, will satisfy the requirements of section 5 (*e*) of the Act and will constitute a permissible deduction.

[Scheme of provisions explained—Wholly and exclusively for the purpose of the land—What is?—Case-law discussed].

E. Anthony Lobo and *R. Rajagopala Ayyar*, for Petitioner.

The Government Pleader (*K. Veeraswami*), for Respondent.

R.M. *Petition allowed.*

[SUPREME COURT.]

Subba Rao and J. C. Shah, JJ. Nandlal Misra *v.* K. L. Misra.
1st April, 1960. Cr.A. No. 64 of 1958.

Criminal Procedure Code (V of 1898), *section* 488—*Preliminary enquiry before notice—Validity.*

Section 488 of the Criminal Procedure Code did not contemplate a preliminary inquiry before issuing a notice but it laid down that all evidence under that chapter should be taken in the presence of respondent or his pleader. The procedure followed by the Magistrate in the present case (not issuing notice to respondent) was unjust to appellant.

"The record disclosed that presumably the Magistrate was oppressed by the high status of respondent, and instead of making a sincere attempt to ascertain the truth, proceeded to adopt a procedure which is not warranted by the Code of Criminal Procedure, and to make an unjudicial approach to the case of appellant."

Order of the High Court is set aside and reference made by the Sessions Judge is accepted and the application is remanded to the Court of Magistrate, I Class, Allahabad, for disposal according to law.

N. C. Sen, for Appellant.

C. K. Daphtary, Solicitor-General of India, for Respondent.

G.R. *Case remanded.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar K. N. Wanchoo and J. C. Shah, JJ. Hathisingh Mfg. Co. *v.* Union of India.
14th April, 1960. Petitions Nos. 88, 106 of 1957 & 103 of 1959.

Industrial Disputes Act (XIV of 1947) *as amended by Act XL of* 1947, *section* 25-*FFF—Vires Articles* 14, 19 (1) (g) *and* 20 *of the Constitution of India.*

The freedom to carry on any trade or business guaranteed by Article 19 (1) (*g*) was not absolute. It was subject to reasonable restrictions, which Parliament was always competent to impose. The closure of an industrial undertaking always resulted in throwing away many of its employees into the ranks of the unemployed. It was, therefore, held that it would be in the interest of the general public if "the misery resulting from unemployment should be redressed. The object of the retrenchment compensation is, therefore, to give partial protection to the employee to enable him to tide over the period of unemployment."

Article 19 (1) (*g*) was, therefore, held not to have been contravened by the impugned provision. (Section 25-FFF of the Industrial Disputes Act). It was further held that it was not unreasonable to award compensation under section 25-FFF (*i*) in addition to the gratuity "which is otherwise claimable under an award binding upon the employer." Absence of a provision for a judicial verdict on the question of compensation would not make the law unreasonable.

Rejecting the argument regarding discrimination it was held that the impugned provision would apply to all the employers covered by it and, therefore, it was not discriminatory in nature.

G. S. Pathak and *B. Sen,* for Petitioner.

M. C. Setalvad, Attorney-General of India, for the Union of India.

Porus A. Mehta, for Intervener.

G.R. *Petitions dismissed.*

Ramachandra Iyer, J. Varadaraja Gounder *v.* Narasimhalu Reddiar.
11th March, 1960. S.R. No. 28388 of 1959.

Civil Procedure Code (*V of* 1908), *section* 115—*Revision against an order made under section* 467 *of the Criminal Procedure Code—Maintainability.*

As an order made under section 476 or 476-A of the Criminal Procedure Code has been expressly made appealable under section 476-B of the Code to the Court to which the Court making the order is subordinate no revision could be filed against such an order under section 115 of the Civil Procedure Code.

An Assistant City Civil Judge, Madras, should be deemed to be subordinate to the Provincial City Civil Judge within the meaning of section 476-B of the Civil Procedure Code.

N. Vanchinathan, for Petitioner.

R.M. *Office note accepted.*

Balakrishna Aiyar and Jagadisan, JJ. Sathappa Chettiar *v.* Umayal Achi.
16*th March,* 1960. O.S.A. No. 46 of 1958.

Madras High Court Original Side Rules, Order 17, *rule* 15—*Inaccuracy—Meaning of —If includes supervening inaccuracy.*

The word 'inaccuracy' in Order 17, rule 15 of the Madras High Court Original Side Rules, is no doubt wide and is intended to cover cases not governed by the other words namely, clerical or arithmetical error occurring therein. Clerical or arithmetical errors connote something which is manifest on the face of the record and the word 'inaccuracy' in the rule should be interpreted in the light of the preceding words 'clerical or arithmetical error'. Hence if there is no inaccuracy manifest on the face of the record, just like clerical or arithmetical error, the Court has no jurisdiction to act under the rule. A supervening inaccuracy, *viz.,* one which renders the original order inaccurate by reason of a subsequent amendment, cannot be one manifest on the face of the record and cannot be amended under the rule.

P. S. Sarangapani Ayyangar, for Appellant.

T. Venkatadri, for Respondent.

R.M. *Petition dismissed.*

Balakrishna Aiyar and Jagadisan, JJ. Abdul Malick & Sons *v.* Md. Yusuff Sait.
21*st March,* 1960. Appeal No. 272 of 1956.

Contract Act (*IX of* 1872), *section* 16—*Undue influence—What is—Gift from parent to child—Presumption of undue influence.*

Transactions in the nature of a bounty from a child to a parent are in equity looked upon with caution by Courts and it is the duty of the donee to prove that the gift was the result of free exercise of independent will and the Court should be satisfied that the donor was acting independently without any influence from the donee. The mere existence of the fiduciary relationship of parent and child between the donee and the donor raises a presumption of undue influence and it is on the donee to rebut the presumption.

K. Krishnaswami Ayyangar, N. C. Raghavachari, N. S. Varadachari and *Narottam Jain,* for Appellants.

V. C. Viraraghavan, for 1st Respondent.

R.M. *Appeal dismissed.*

Rajagopalan and Ramachandra Iyer, JJ.
14th December, 1959.

Madura Mills Co., Ltd. *v.* State of Madras.
T.R.C. No. 21 of 1957.

Madras General Sales Tax Act (IX of 1939)—*Turnover and Assessment Rules,* 1939, *rule* 4-A—*Applicability and validity.*

Rule 4-A (iv) of the Madras General Sales Tax Assessment and Turnover Rules, 1939, is not ambiguous in any way and the single point levy prescribed under the rule will apply to all sales of cotton to a spinning mill in the State without reference to any question of licensing of the dealer. The rule is *intra vires* and enforceable.

K. V. Venkatasubramania Ayyar instructed by *Messrs. King and Partridge,* for Petitioner.

The Government Pleader (*K. Veeraswami*) for Respondent.

R.M. ——— *Petition dismissed.*

Rajamannar, C.J. and Jagadisan, J.
21st January, 1960.

Thangavelu *v.* Tiruchirapalli City Co-op. Bank, Ltd.
W.A. No. 84 of 1957.

Madras Shops and Establishments Act (XXXVI of 1947), *sections* 6 *and* 41 (2)—*Jurisdiction of Commissioner—Exemption of an establishment from the provisions of the Act subject to certain conditions—When affects jurisdiction of the Commissioner.*

Where the State Government by virtue of the powers under section 6 of the Madras Shops and Establishments Act exempts any establishment from the provisions of the Act, subject to the condition that the establishment concerned incorporates the provisions of Chapters II, III, V and VII of the Act in their by-laws, the result would be that section 41 of the Act which occurs in Chapter VII of the Act would apply in any event to such establishments as the same would be part of its by-laws. Or if such a condition has not been complied with the exemption would not be effective. A right of appeal under section 41 (2) of a discharged workman would be preserved under the by-laws in such circumstances even though the provisions of the Act as such may have no application by virtue of the exemption order.

M. Natesan, for Appellant.

R. Gopalaswami Ayyangar, for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
21st January, 1960.

Abdur Rahim *v.* State of Madras.
W.P. Mo. 592 of 1959, etc.

Madras Beedi Industrial Premises (Regulation of Conditions of Work) Act (XXXII of 1958)—*Validity—If opposed to Article* 19 (1) (g) *of the Constitution.*

The Madras Beedi Industrial Premises (Regulation of Conditions of Work) Act, except section 2 (*g*) (i) of the same, is a valid piece of legislation and the provisions of the Act do not generally offend against Article 19 (1) (*g*) of the Constitution. There is no prohibition in the Act of the business of manufacture and sale of beedies though there is a restriction or regulation in regard to the mode of manufacture. The restrictions imposed under the Act are reasonable and in the interests of the public and saved by Article 19 (6) of the Constitution. Section 2 (*g*) (i) of the Act however, which makes a trade mark holder or registered user liable under the Act is unreasonable and unrelated to the mischief sought to be remedied and is as such void and unenforceable.

(Case-law discussed —Policy behind the Legislation considered—Provisions of the Act analysed—Object and scope of the provisions indicated.)

Inamdar Abdus Salam, Samiullah Baig, C.L. Narain, K. V. Venkatasubramania Ayyar, K. K. Venugopal, M. K. Nambiyar, for Petitioners.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Additional Government Pleader (*M. M. Ismail*), for Respondents.

R.M. ——— *Orders accordingly.*

Ramaswami, J.
11th February, 1960.

Nallakaruppan Chettiar *v.* Subbiah Thevar.
Crl. Rev. C. No. 716 of 1959.
Crl. Rev. P. No. 697 of 1959.

Cattle Trespass Act (*I of* 1871), *section* 10—*Scope of*—' *Cultivator or occupier*'—*Meaning of*.

Section 10 of the Cattle Trespass Act contemplates certain sets of persons who are authorised to seize cattle trespassing under certain circumstances. One of them is the cultivator or occupier of the land on which the cattle trespasses. The term ' cultivator ' includes not only the person who actually toils on the land on his own account but also the owner of the land who gets it cultivated through his farm servant or hired labour. The workable test in the interpretation of the terms 'cutivator' or ' occupier ' appears to be whether or not the person who claims to have legally seized the cattle or caused them to be seized can maintain that he has suffered any loss or damage as the very scheme of the Act is based on the concept of damage caused by the trespassing cattle and consequent loss to cultivators.

R. Santanam, for Petitioner.

The Public Prosecutor (*P. S. Kailasam*), for the State.

M. S. Sethu, for Complainant.

R.M. ——— *Sentence reduced.*

Rajamannar, C.J., and
Basheer Ahmed Sayeed, J.
12th February, 1960.

Louis Dreyfus & Co., Ltd. *v.*
Balasubbaraya Chettiar & Sons.
O.S.A. No. 60 of 1956.

Arbitration Act (*X of* 1940), *section* 30—*Setting aside award under*—*Misconduct*—*What amounts to.*

The Arbitrators in a reference under the Arbitration Act are the final judges of fact. It is not open to the Court in an application under section 30 of the Act to say that in its opinion the evidence was not sufficient to establish the conclusion. The power of the Court to examine the evidence is not as a Court of appeal but to find out whether the finding of the arbitrators is so perverse and unsupported by the evidence adduced before them so that it could be said that the arbitrators have misconducted themselves or the proceedings before them.

Messrs. King and *Partridge,* for Appellant.

V. C. Gopalaratnam and *V. Devarajan,* for Respondent.

R.M. ——— *Appeal allowed.*

Rajagopalan and Ramachandra Iyer, JJ.
17th February, 1960.

Sundaram Iyengar & Sons
(P.) Ltd. *v.* State of Madras.
W.P. Nos. 252 and 253 of 1957.

Madras General Sales-tax (*Definition of Turnover and Assessment*) *Act* (*XVII of* 1954) *and Turnover and Assessments Rules,* 1939, *rule* 12—*Applicability*—*Notice calling upon repayment of tax duly refunded under orders of Court*—*Validity.*

Rule 12 of the Madras General Sales-tax Turnover and Assessment Rules, 1939, will in terms apply only to the case of an original assessment. The rule contemplates only an arithmetical computation after the order of assessment is made. Where a demand or refund certificate has been issued the rule ceases to have effect except in cases covered by rules 14-A and 15(2) of the General Sales Tax Rules. Though the Madras Sales-tax (Definition of Turnover and Assessment) Act, 1954, validated the levy of tax on certain turnovers, it has not provided any machinery for recovery of amounts refunded to an assessee before the Act. Rule 12 of the Turnover and Assessment Rules cannot be invoked in such cases.

K. V. Venkatasubramania Ayyar and *N. R. Govindachari,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ——— *Rule absolute.*

Ganapathia Pillai, J. Sayed Gani *v.* State of Madras.
18th February, 1960. W.P. No. 1169 of 1959.

Industrial Disputes Act (XIV of 1947), *section* 12—*Conciliation proceedings—Conciliation Officer—If should give notice to the workman at whose instance the dispute was raised.*

Though normally as a matter of practice a Conciliation Officer acting under section 12 of the Industrial Disputes Act, 1947, issues notice to the workman at whose instance the dispute was raised, there is no duty cast on him under the section to give such notice. The nature of the duties of an officer under the section is more in the nature of investigation than adjudication upon the rights of parties and as such the sufficiency of any notice given to the employee concerned in proceedings under the section cannot be questioned on principles of natural justice.

T. A. Raghunathachari, for the Petitioner.

R.M. ——— *Petition dismissed.*

Basheer Ahmed Sayeed and Subramaniam, JJ. Obliswami Naidu *v.* State
19*th February,* 1960. Transport Appellate Tripunal.
W.A. No. 91 of 1959.

Motor Vehicles Act (IV of 1939), *section* 134 (2)—*Power of Appellate Tribunal to remand proceedings after long lapse of time—Validity.*

Constitution of India (1950), *Article* 226—Certiorari—*Basis of jurisdiction.*

The whole justification for a writ of *certiorari* is to prevent, where no other remedy is available, a patent injustice being allowed to stand.

The State Transport Appellate Tribunal under the Motor Vehicles Act, can set aside the order of an authority under the Act only where it appears that the order of the authority has occasioned failure of justice.

Where the Appellate Tribunal finds that the evidence on record is not sufficient for it to say that the order of the authority was not right, the Tribunal could have no jurisdiction to vary the order unless it is shown that the authority has disabled any party from placing all the necessary evidence before it. An order of the Appellate Tribunal remanding a matter to the authority to determine the facts as they existed some years ago will be so plainly unreasonable to constitute a patent injustice that it should be quashed by the issue of a writ of *certiorari.*

M. Ramachandran and *T. V. Balakrishnan,* for Appellant.

The Additional Government Pleader (*M. M. Ismail*), *M. N. Rangachari, T. Chengalvaroyan, K. Tirumalai* and *A. C. Munuswami Reddy,* for Respondent.

R.M. ——— *Appeal allowed.*

Rajamannar, C.J. and Jagadisan J. Kurian *v.* General Manager,
26*th February,* 1960. Southern Railway, Madras.
W.A. No. 119 of 1957.

Constitution of India (1950), *Article* 311—*Termination of service in contravention of—Letter of resignation sent by employee not acted upon—Subsequent termination of service on the basis of that letter—Validity.*

Where the services of a civil servant is terminated on the footing that the employee concerned has resigned his post it may not amount to removal from service within the meaning of Article 311 of the Constitution. But where it is clear that the letter of resignation was either withdrawn subsequently or was not acted upon by the authorities, themselves having regard to their conduct inconsistent with the acceptance of such resignation, the termination of service without notice purporting to be on the basis of such a letter will violate against Article 311 of the Constitution and will be invalid.

G. Vasantha Pai and *D. Padmanabha Pai,* for Appellant.

C. Govindaraja Ayyangar, for Respondent.

R.M. ——— *Rule absolute.*

Rajagopalan, J.
3rd March, 1960.

Rangachari *v.* General Manager, Southern Railway.
W.P. No. 1051 of 1959.

Constitution of India (1950), *Article* 16—*Scope of—Reservation of promotion post in favour of backward classes—Validity—Backward classes who are—'Employment'—Scope of.*

The equality of opportunity which Article 16 (1) of the Constitution of India guarantees and the discrimination which Article 16 (2) prohibits apply also to promotions of civil servants from one post to another when both are included in the same service. Though promotions may not be appointment to a service it is an appointment to an office within the meaning of Article 16 (1) and (2). The term 'employment' in Article 16 (1) and (2) covers the entire period of service of a civil servant and throughout his service a citizen is entitled to the rights guaranteed by clauses (1) and (2) of Article 16.

Taking the scheme of the Constitution as a whole the expression 'backward classes' in Article 16 (4) of the Constitution includes members of the scheduled castes and scheduled tribes. Article 16 (1) of the Constitution no doubt authorises the reservation of appointments and posts in favour of backward classes. But promotions from one post to another in the same service is neither appointment to a service nor appointment to a post. The ambit of Article 16 (4) is narrower than that of Article 16 (2). While Article 16 (2) applies to all civil posts and all appointments thereto, Article 16 (4) is confined only to appointments to a service or post, which means the initial appointment to the service itself. It cannot cover a case of promotion from one post to another of a higher grade in the same service. While such promotions are within the scope of the ban against discrimination imposed by Article 16 (2) of the Constitution they are outside the protection under Article 16 (4).

Hence a reservation in favour of backward classes in respect of promotions from one post to another in the same service will be unconstitutional, as offending against Article 16 (2) of the Constitution and is not saved by Article 16 (4).

S. Mohan Kumaramangalam and *P. S. Madhusudanan,* for Petitioner.

K. Rajah Ayyar, C. Govindaraja Ayyangar and *B. T. Seshadri,* for Respondent.

R.M. — *Rule absolute.*

Rajagopalan, J.
17th March, 1960.

K.P.V. Sheik Mohd. Rowther & Co. *v.*
Trustees of Port Trust, Madras, by its Chairman.
W.P. Nos. 889 and 908 to 923 of 1959.

Madras Port Trust Act (*II of* 1905), *section* 39—*Power of Port Trust to levy scales of fees for labour provided.*

The Port Trust has a right and duty under the statute to undertake the service of handling the cargo received in the Port and providing the necessary shore labour and the charges thereof could be imposed on the person to whom the services are rendered. The Port Trust in taking charge of the landed goods from the Masters of the ships is in the position of a bailee in relation to the consignee of the goods. The unloading of the goods from the ship in the quay, is a joint operation in which both the shipping agent as representative of the Master of the ship, and the consignee or his agent have well defined obligations. Thus the Port Trust in receiving the goods on behalf of the consignees is rendering service to the shipping agents and is therefore entitled to charge the Shipping agents for the same. That such services are for the benefit of the consignee also makes no difference to the right of the Port Trust, under the scheme underlying section 39 of the Madras Port Trust Act.

K. V. Venkatasubramania Ayyar and *A. A. S. Mustafa,* for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*) and *V. V. Raghavan,* and *V. Srinivasan,* for Respondent.

R.M. — *Petitions dismissed.*

[SUPREML COURT].

S. J. Imam, S. K. Das, J. L. Kapur,
A. K. Sarkar and M. Hidayatullah, JJ.
14th April 1960.

Darbar Vira Vala Suraj Vala *v.*
The State of Bombay.
Petition No. 62 of 1956.

Customary grant of Bhayat—Lapse of grant—Effect—Article 19 (1) (b) *of the Constitution of India, if violated.*

On language and construction of the terms of the document, the Lekh, dated 15th July, 1943, it is clear that the grant was made to the petitioner as a Bhayat and when he ceased to be a Bhayat on becoming the Ruler of the State, the grant lapsed to the State. The term 'Bhayat' is not merely descriptive and certain rights and privileges conferred under the grant indicated that the grant was operative so long as the petitioner remains a Bhayat.

As the grant lapsed under the terms of the grant there was no violation of the fundamental rights of the petitioner under Article 19 (1) (*b*) of the Constitution.

N. H. Hingorani, for Petitioner.

R. Ganapathy Aiyar, for Respondent.

G.R. —————— *Petition dismissed.*

[SUPREME COURT].

S. K. Das, J. L. Kapur and
M. Hidayatullah, JJ.
26th April, 1960.

Pingle Industries, Ltd. *v.*
C.I.T., Hyderabad.
C.I.T. Madras *v.* Abdul Kayum.
C.A. Nos. 190 of 1955 & 64 of 1956.

Income-tax Act (*XI of* 1922), *section* 10 (2) (xv)—*Capital expenditure and Revenue expenditure—Test.*

Lease money paid for acquiring the right to extract stones from a quarry is capital expenditure and not a revenue expenditure as it was not incurred for the purchase of raw material but for the acquisition of a right to a source of raw materials of an enduring nature. The expenditure was not incurred for the purchase of raw materials for a manufacturing business but one incurred for the acquisition of a right the possession of which was a necessary condition for the carrying on of the business of the assessee company.

N. A. Palkiwala, with *R. Ganapathy Aiyar,* for Appellants in C.A. No. 190 and for Respondent in C.A. No. 64.

H. N. Sanayal, Additional Solicitor-General with *D. Gupta,* for Appellant in C.A. No. 64 and for Respondent in C.A. No. 190.

G.R. —————— *C.A. No.* 190 *dismissed and C.A. No.* 64 *allowed.*

[SUPREME COURT].

B. P. Sinha, C.J., P. B. Gajendragadkar,
K. Subba Rao, K. C. Das Gupta
and J. C. Shah, JJ.
28th April, 1960.

Jadab Singh *v.*
Himachal Pradesh Administration.
Petitions Nos. 161 of 1958, 16, 17, 35, 36, 58, 69, 102 and 109 of 1959.

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954—*Himachal Pradesh Assembly* (*Constitution and Proceedings*) *Validation Ordinance* (*VII of* 1958 *and Act No.* (*LVI of* 1958)—*Article* 240 *of the Constitution of India,* 1950.

Powers of Parliament under Article 240 of the Constitution is not exhaustive, and under its residuary powers Parliament has the necessary authority to pass the validating Act, and Parliament was competent to remove the bar which arose because of the failure to issue the notification under section 74 of the Representation of the People Act. Therefore " The Abolition of Big Landed Estates Act " was a valid piece of Legislation and was not violative of the fundamental rights of the

petitioners because its object was to bring about agrarian reform, and such a purpose clearly falls within the class of Statutes contemplated by Article 31-A of the Constitution.

" The Impugned Act contains provisions for transferring the interest of the landowners to the tenants in lands and for acquisition by the State of the property of the landowners on payment of compensation under the schedule provided in that behalf. This Court has held in *Shri Ram Narayan* v. *State of Bombay*, (1959 S.C.J. 679) that a statute the object of which is to bring about agrarian reform by transferring the interest of the landowners to the tenants falls within the class of statutes contemplated by Article 31-A (*a*) is protected from the attack that it violates the fundamental rights enshrined in Articles 14, 19 and 31 of the Constitution.

Achhru Ram, D. R. Prem and *Ganpat Rai*, for the Petitioners in all petitions except No. 36 of 1959.

D. R. Prem and *Satyanarayana*, for Petitioners in No. 36 of 1959.

C. K. Daphtary, Solititor-General of India, for Respondents in all the petitions.

G.R. —— *Petitions dismissed.*

[SUPREME COURT].

B. P. Sinha, C.J., S. J. Imam, A. K. Sarkar, K. Subba Rao and J. C. Shah, JJ.
29th April, 1960.

A. St. Arunachalam Pillai *v.* Southern Roadways, Ltd.
C.A. No. 262 of 1958.

Motor Vehicles Act (IV of 1939), *section* 64-A—*Scope of—Route permit terms—Variation—Jurisdiction.*

BY MAJORITY :

The Regional Transport Officer has jurisdiction to vary the conditions of a permit by virtue of the power conferred on him by the Madras Government. Consequently the Government had the power under section 64-A of the Motor Vehicles Act to do that which the Regional Transport Officer could have done but refused to do.

M. C. Setalvad, Attorney-General of India, for Appellant.

R. Ganapathy Aiyar, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT].

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta.
3rd May, 1960.

East & West Steamship Co. *v.* S. K. Ramalingam Chettiar.
Narandas Mathuradas Narielwala *v.* Bharat Lime, Ltd.
C.A. No. 88 of 1956 and C.As. Nos. 91 & 92 of 1958.

Carriage of Goods by Sea Act (XXVI of 1925)—*Schedule, Article III, paragraph* 6, *clause* 3—*Scope and interpretation.*

" In any event the carrier and shipper shall be discharged from all liability in respect of loss or damage unless a suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered." The words " Loss or damage " is intended to mean and includes every kind of loss to the owner of the goods whether the goods are lost totally or merely lost to the owner by non-delivery.

Also held that the words " discharged from liability. . ." is not a rule of limitation but expresses a total extinction of liability and should in view of the international character of the legislation be construed in that sense.

B. Sen, for Appellant in C.A. No. 88.

C. R. Pattabiraman, for Respondent in C.A. No. 88.

C. K. Daphtary, Solicitor-General of India, for Appellants in C.A. Nos. 91 and 92.

G. Gopala Krishnan and *A. V. V. Shastri*, for Respondents.

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo, and K. C. Das Gupta, JJ.
4th May, 1960.

Luhar Amritlal Nagji *v.* Doshi Jayanthilal Jetalal.
C.A. No. 121 of 1956.

*Hindu Law—Antecedent debt of father—Pious obligation of sons—Immoral or avvyavaharika debts—Challenge by sons—*Stare decisis*—Effect.*

The doctrine of pious obligation under which sons are held liable to discharge their fathers' debts is based solely on religious considerations, and such debts under Hindu Law must be "for a cause not repugnant to good morals." The question for consideration before the Court was whether in determining the true effect of the provisions of Hindu Law bearing on this question the Court should construe the original text in spite of the fact that the point raised was covered by a number of judicial decisions.

In order to succeed in their challenge the sons must prove the immoral character of the antecedent debts and must also prove that the alienee had notice of the immoral character of such debt. The contention of the appellants that the principles of Hindu Law viewed in the light of ancient sanskrit texts did not justify the view taken by the Privy Council in 6 I.A. 88, and 51 I.A. 129, 46 M.L.J. 23 could not be upheld as the principle of *stare decisis* applies. For the anomalies in this branch of Hindu Law the solution lies with the Legislature and not with the Courts. It is too late now to attempt to decide the point purely in the light of ancient texts.

Dr W. S. Barlingay, for Appellants.

M. L. Jain, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
5th May, 1960.

Ramnagar Cane & Sugar Co., Ltd. *v.* Jatin Chakravarty.
Cr.A. No. 96 of 1959.

Industrial Disputes Act (XIV of 1947), sections 22 (1) (D) and 24 (1) (i)—Strike during pendency of conciliation—Illegal.

The effect of section 22 (1) (D) of the Industrial Disputes Act was that if a strike was declared in a public utility service during the pendency of a conciliation proceeding, it would be illegal. In order to bind the workmen under this provision, it was not necessary to show that the workmen should belong to the union which was a party to the dispute before the conciliator.

The Courts below were in error in putting an unduly narrow and restricted construction on the provisions of section 22 (1) (D) of the Act. The conciliation proceedings between the appellant and the employees union attracted the provisions of section 22 (1) (D) to the strike in question and made it illegal under section 24 (1) (i) of the Act.

The Court, therefore, convicted the 11 employees of the offence charged and set aside the order of acquittal passed by the Calcutta High Court.

C. K. Daphtary, Solicitor-General of India, for Appellant.

Respondents *ex parte*.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

S. K. Das, S. K. Kapur, K. Subba Rao, M. Hidayatullah and J. C. Shah, JJ.
6th May, 1960.

State of U. P. *v.* Deoman Upadhaya.
Cr.A. No. 1 of 1960.

Criminal Procedure Code (V of 1898), *section* 162 (2)—*Evidence Act (I of* 1872), *section* 27—*Validity of—Article* 14, *Constitution of India* (1950)—*Scope.*

BY MAJORITY :

"The classification between persons in custody and persons not in custody, in the context of admissibility of statements made by them concerning the offence charged cannot be called arbitrary, artificial or evasive. The legislation has made a real distinction between these two classes and has enacted distinct rules about admissibility of statements, confessional otherwise, made by them.

The High Court was in error in holding that section 27 of the Evidence Act and section 162 (2) of the Criminal Procedure Code in so far as " that section relates to section 27 of the Evidence Act" are void as offending Article 14 of the Constitution.

H. N. Sanayal, Additional Solicitor-General of India, for Appellant.

H. J. Umrigar, for Respondent.

G.R. *Appeal allowed.*

Subrahmanyam, J.
21st January, 1960.

Srinivasa Ayyangar *v.* Varadachariar.
S.A. No. 936 of 1957.

Civil Procedure Code (V of 1908); *Order* 21, *rules* 35, 36, 95 *and* 96—*Applicability—Purchaser of an undivided share of the judgment-debtor in property jointly owned by the judgment-debtors—Suit for partition and possession—Limitation for.*

There is no provision in Order 21, Civil Procedure Code, under which a purchaser of a share or interest in property held by the judgment-debtor in common or jointly with other persons can apply or obtain process for delivery of such share or interest ; nor is such a purchaser entitled to be in joint possession with the others. Hence symbolic delivery in such cases cannot furnish a fresh starting point of limitation for a suit for partition and possession.

(1955) 1 M.L.J. 414, followed.

R. Gopalaswami Ayyangar and *P. S. Srisailam*, for Appellant.

K. S. Desikan and *K. Raman*, for Respondents.

V. Krishnamurthi, for Respondent (Court Guardian).

R.M. *Orders accordingly.*

Subrahmanyam, J.
21st January, 1960.

Valliulakkai *v.* Eawari Pillai Anna.
A.A.A. No. 45 of 1958.

Travancore-Cochin Prevention of Eviction of Kudikidappukars Act (XIII of 1955), *sections* 4, 5 *and* 9—*Scope of—Right of permanent occupancy—When to be claimed in redemption suits.*

A suit for redemption of an usufructuary mortgage of land is a suit for recovery of possession of immoveable property within the meaning of section 9 of the Travancore-Cochin Prevention of Eviction of Kudikidappukars Act, 1955 and a defendant in such a suit is bound to put forward his claim, if any, for occupancy in that suit. If no such claim is put forward or tried in the suit itself it cannot be pleaded by way of defence to the execution of the decree.

P. Anantakrishnan Nair, for Appellant.

S. Padmanabhan, for Respondent.

R.M. *Appeal dismissed.*

Ramachandra Iyer, J. Chakravarthi Iyengar *v.* Kannan.
29th January, 1960. Appeal Nos. 178 & 229 of 1958.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 87 (2)—*Proceedings before Collector or Land Acquisition Officer under sections* 9 *and* 11 *of the Land Acquisition Act for determining compensation commencing earlier to the new Court-fees Act—Reference to Court under section* 18 *of the Land Acquisition Act subsequent to the new Court-fees Act—Court-fees on appeals —If should be under the new Act.*

The new Madras Court-fees and Suits Valuation Act, 1955, provides for payment of Court-fees not only in regard to suits but also in regard to matters before the other Tribunals or Officers who may be either Revenue or Administrative Officers. Hence the ' proceedings ' referred to in section 87 (2) of the Act should comprehend all matters other than suits. The Collector or Land Acquisition Officer acting under section 11 of the Land Acquisition Act is deciding the rights of parties and such proceedings will also fall under section 87 (2) of the Act. The word ' Proceedings ' in the section should be held to be used as meaning a proceeding in the nature of a suit.

(1942) 1 M.L.J. 111, followed.

A reference under section 18 of the Land Acquisition Act is only a continuation or at any rate arises out of, the initial proceedings under section 11 of the Act. Hence appeals filed in High Court which arise out of the proceedings originally started under sections 9 and 11 of the Land Acquisition Act before the coming into force of the new Court-fees Act of 1955 would be governed by the old Court-fees Act by virtue of section 87 (2) of the new Act.

C. Vasudevan and *T. V. Srinivasan,* for Appellant in Appeal No. 178 of 1958.

T.S. Nagaswami Ayyar and *V. Nataraj,* for Appellant in Appeal No. 229 of 1958.

The Government Pleader (*K. Veeraswami*), for Respondent in both.

R.M. *Reference answered.*

Balakrishna Iyer, J. Rangaraja Iyer *v.* Babu Iyer.
4th February, 1960. A.A.O. No. 191 of 1957.

Civil Procedure Code (*V of* 1908), *Order* 24, *rule* 43—*Money deposited in Court directed to be paid to the decree-holder on furnishing security—Decree-holder not furnishing security— If judgment-debtor liable to pay interest.*

Where the judgment-debtor pays the decree amount into Court and insists on the decree-holder drawing the same only on furnishing security, his deposit is not unconditional and he will still be liable to pay interest on the decree amount notwithstanding the deposit.

P. S. Srisailam, for Appellant.

S. Amudachari and *A. V. Raghavan,* for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer, J. Marcalline Fernando *v.* St. Francis Xavier Church.
12th February, 1960. C.R.P. No. 547 of 1959.

Civil Procedure Code (*V of* 1908), *section* 133 *and Order* 26, *rule* 1—*Issue of Commission to examine witness—Scope of power.*

The examination of a witness on Commission is not an alternative to an examination in Court as one of the fundamental rules of procedure in judicial trial is that the Judge who is charged with the decision of a case should himself hear the evidence. Unless the conditions laid down in Order 26, rule 1 or section 133, Civil Procedure Code are satisfied, a Court, would have no jurisdiction to delegate the examination of witnesses to a Commission on the supposed theory that evidence in Court is necessary only in cases where the witnesses is likely to speak an untruth elsewhere. The mere fact that by reason of his culture and background as a priest a person could be expected to speak only the truth would not by itself be a sufficient ground to entitle him for examination on Commission.

V. Srinivasan, for Petitioner.

A. P. C. Albuquerque, for Respondent.

R.M. ——— *Petition allowed.*

Rajagopalan, J.
6th April, 1960.

Sivaswami Padayachi & Sons *v.* Kassimiah Charities.
W.A. Nos 177 and 200 of 1960.

Madras Estates (Supplementary) Act (XXX of 1956), *section* 5 (4)—*Power of Tribunal under to appoint a Receiver.*

A Tribunal under Madras Act XXX of 1956 has jurisdiction to assume powers vested in a civil Court under Order 40, rule 1, Civil Procedure Code and appoint a receiver pending decision of the question at issue in the proceedings before it under section 6 of the Act. The expression same powers as a civil Court when trying a suit under section 5 (4) of the Act is wide enough to include the power to appoint a receiver.

R. Gopalaswami Ayyangar and *K. N. Balasubramaniam*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *K. Rajah Ayyar* and *V. Seshadri*, for Respondent, in W.P. No. 177 of 1960.

M. R. Narayanaswami, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*) and *T. V. Balakrishnan*, for Respondent, in W.P. No. 200 of 1960.

R.M. ——— *Petition dismissed.*

[FULL BENCH.]

Somasundaram, Ramaswami and Ananthanarayanan, JJ.
6th April, 1960.

Mohan Ram *v.* Sundaramier.
A.A.O. No. 272 of 1957.

Civil Procedure Code (V of 1908), *sections* 11 *and* 47—*Poswers of executing Court—Decree directing sale of inalienable land like service inams—If could be questioned at the time of execution.*

It is generally true that an executing Court cannot go behind the decree. But there are certain well-recognised exceptions to this rule. Where alienation of certain property is prohibited on grounds of public policy, either under the general law or by statute, the executing Court can refuse to execute a decree which directs such a sale. Where the executing Court is satisfied that the lands sought to be sold in execution of a decree are service inam lands and are therefore not saleable, it can refuse to execute the decree.

A.I.R. 1937 Mad. 918, followed.

(1957) (2) An.W.R. 137 (F.B.), differed.

But to enable an executing Court to refuse to execute such a decree there should be some material either in the plaint or written statement or issues or judgment which when looked into could enable the Court to conclude that the land sought to be sold is an inalienable service inam.

Per Ananthanarayanan, J.—"The rule of estoppel or constructive *res judicata* which would prevent the inamdar or his successors in title from agitating the matter of inalienability in execution proceedings is upon the plane of principle. The power of the executing Court to go behind the decree, because it is opposed to public policy or offends a statutory prohibition, is upon another plane altogether. While no executing Court can launch into a fresh trial because of mere allegations or further new material claimed to be available, if materials on the same footing as the decree itself and equally evident and indisputable are available on record to show that the land sought to be sold is inalienable, the Court can go behind the decree in such instances."

K. S. Champakesa Ayyangar and *K. C. Srinivasan*, for Appellant.

T. P. Gopalakrishnan, O. K. Ramalingam, K. S. Ramamurthi and *T. R. Mani*, for Respondent.

R.M. ——— *Answered accordingly.*

[END OF (1960) 1 M.L.J. (Notes of Recent Cases).]